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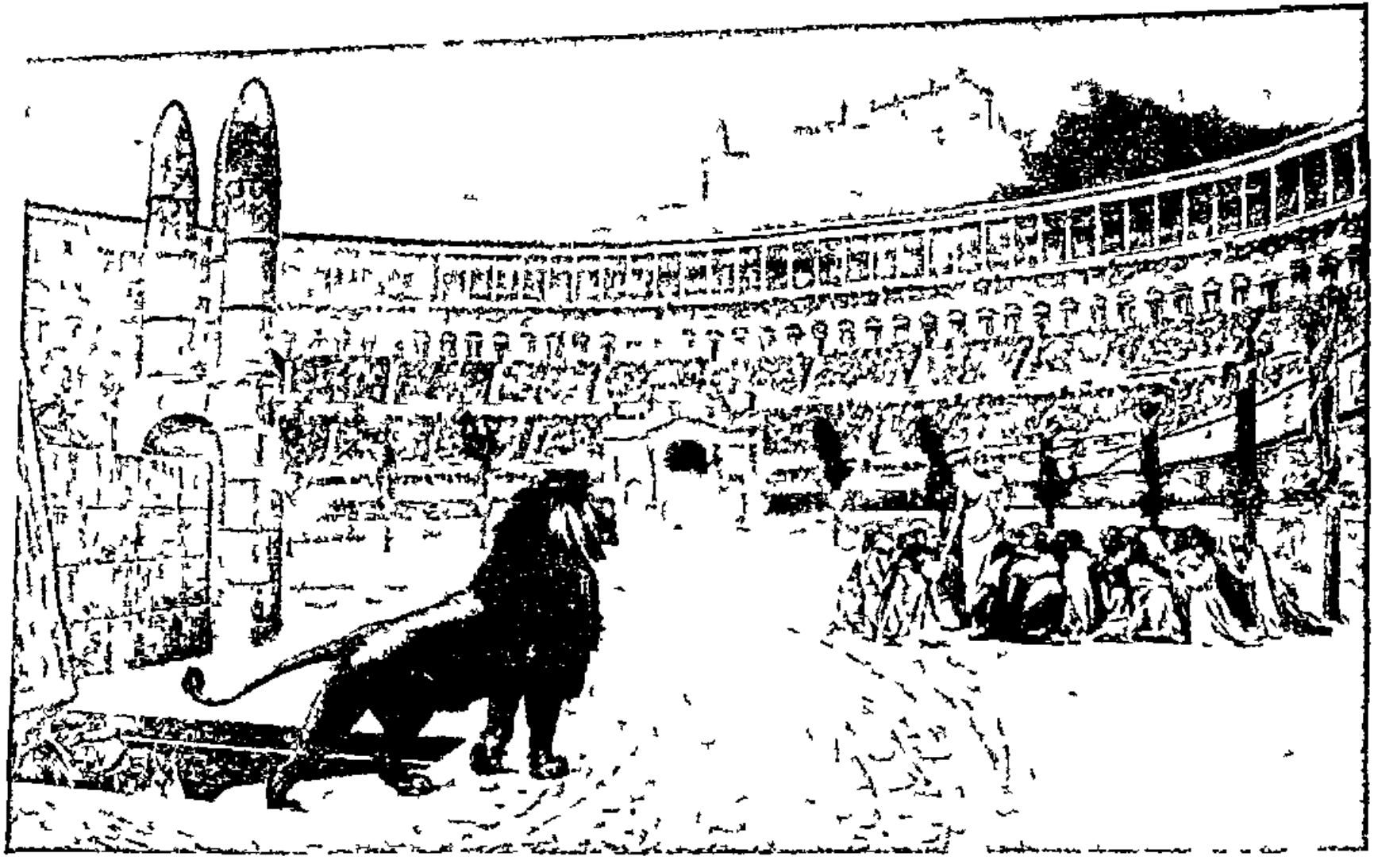
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THE LAST PRAYER.

(Christian Martyrs in the Colisæum)

Heliogravure from the original painting by J. L. Gérôme

HISTORY OF EUROPE
DURING THE MIDDLE AGES

BY

HENRY HALLAM

WITH A SPECIAL INTRODUCTION BY

ARTHUR RICHMOND MARSH, A.B.

PROFESSOR OF COMPARATIVE LITERATURE

AT HARVARD UNIVERSITY

REVISED EDITION

VOLUME I

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SPECIAL INTRODUCTION

IT is now more than three quarters of a century since the first edition of Hallam's "Middle Ages" appeared The author's volume of supplemental notes was published thirty years later, but this is already more than fifty years ago During these two generations vast advances have been made in the study of almost every aspect of the mediæval period Whole sciences, concerning themselves largely with it—as, for example, the science of Romance Philology—have been born New methods of studying history and institutions have been elaborated Immense numbers of documents, literary and historical, that were practically buried in uncatalogued archives and libraries, have been brought to the light of day, and made accessible to all scholars Multitudes of obscurities that made the middle ages literally a period of darkness have been cleared up, and the modern student may ascertain almost as much about the political, social, and literary conditions of the time, as about those of any portion of human history, except the most recent Perhaps most important of all the general attitude of men's minds towards the subject of mediæval studies has profoundly changed The passion for romantic glamor that found its clearest expression in the poetry of the German Tieck and his followers but that to some extent affected all men's minds has given way to the curiosity of science and the intellectual passion for exact knowledge Much has been gained, something, too has been lost But it is now impossible for anyone to approach the matter in quite the same spirit as did the men of the first years of the century

In view of all this it is a natural question why it should be worth while to issue again a book which from the nature of the case can give no account of the results obtained by so long a period of systematic study In the case of most books there could be but one answer to this question—it would not be worth while to republish them But with regard to the pres

ent work this is very far indeed from being true And the explanation in a word is that the book is a classic and that as such it has qualities that make it hardly less valuable than when it first appeared

No one has yet hit upon a receipt for the composition of a classic or has been able to give a really adequate explanation of the phenomenon when a classic has actually been composed It would be useless then to try to show all the causes that have combined to give to Hallam s work this notable quality It is however possible to indicate some of the reasons why it is still worth while for the general reader and indeed for the technical student to use the book Undoubtedly, the most fundamental reason of all is that Hallam despite the relative insufficiency of the material at his disposal was yet able to discern the permanent sources of interest in that material and to set these forth with enough illustration to impress them upon the mind as truly essential His cool and sober intelligence was not misled by the romantic hue and cry about him the very lack of imagination that has sometimes been made a reproach to him kept him from following poetic will o the wisps and he was too sane to suppose himself to be the prophet of a new gospel whether in literature society or religion He wished his bool to exhibit a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the middle ages The phrase is significant particularly in view of the time when it was written And the best of it is that the verdict of seventy five years must be that he succeeded in doing what he undertook to do

To make this clear must be the purpose of this brief introduction And first of all we may remark that one fundamental truth only now fairly established for the world at large seems to have been perfectly clear to Hallam from the start This truth is that in the middle ages we should not see a kind of gap in nature a period of barbarism and intellectual decay thrust in between the civilization of the ancients and that of the moderns This was the view of the men of the Renaissance and has been that of all the children of the Renaissance down to our own day But an idea more full of untruth was surely never promulgated The real fact is that in the middle ages we are to see the beginnings of ourselves We are the per

a striking degree It is in these countries that the most significant and far reaching political, social, and intellectual achievements of the middle ages were accomplished These are the countries, too, which throughout modern history have occupied a position of scarcely interrupted ascendancy in determining the course of modern culture Italy, Spain, Germany proper, have all had their moments of political or intellectual authority, but in the long run it is France and England that assert the permanent right of larger control over the culture of modern men

To France and England, then, Hallam very rightly gave much the largest amount of attention in his survey of the middle ages He desired his readers to follow in the first of these countries the development of those notions of social organization which, in dealing with the mediæval period, we commonly call feudal, but which are essentially the basis of modern social relations as a whole, despite the effort of our own century to rehabilitate the ancient conception of human equality In the other country, England he drew the picture of the beginnings and earlier evolution of that new conception of the function of government, and of the rights and obligations of the subject with regard to his government, which has resulted in the English constitution of to day, and in the method of English government wherever the English race exists As a setting for these larger movements he gave, indeed what was essential concerning the growth and decay of dynasties, the territorial changes, the internal and external wars the complicated political relations that attended the course of both these great nations But the attentive reader will easily see that to Hallam these are but the circumstance, not the ultimate reality of the history of the two peoples

The history of France and England however cannot be properly understood without some reference to the other countries of Europe Moreover these countries quite apart from their relations to France and England have much in their history that is significant and enlightening So we find in Hallam's book the main lines of their development Naturally, detail is here much less abundant and the complexities of events are more rapidly and summarily treated Italy as she ought gets the largest space both because her influence on mediæval and modern culture has been greatest, and because such phe

culture thus have all a place in Hallam's pages Yet even here the merits of his book do not end The competent scholar is struck, as he reads it, with the clearness of the author's perception of the importance of matters that do not belong to what may be called the picturesque side of history—that is, of history as it is too generally conceived Thus he had always a keen eye for economic conditions, and in this respect was almost two generations in advance of most of his contemporaries In our own time, we have seen a vast development of the study of the economic history of Europe, most of our universities now have professors who devote themselves to nothing else, and of books on the subject there is no end But this was not so at all when Hallam wrote Few men then would have felt this to be an essential matter in the historical treatment of a period Hallam did, and it is greatly to his credit So, too he saw that social life and manners are more than the mere background of history In a sense, they are history itself, and political events do but illustrate them The chapters in Hallam s book dealing with these matters might now be greatly enlarged in the light of documents particularly literary, that are available to us, yet Hallam said little on the subject that was not judicious or that needs complete restatement

It may, then fairly be said that the attentive reader can still obtain from this work a general view of those essential features of the middle ages that must be borne in mind by all who desire really to know the period Details without number are available to be later fitted into the scheme thus obtained But all of us have reason to be grateful to the man who in any field of studies can show us the lines of permanent and profitable interest Such men are all too few, and their work does not easily become outworn

ARTHUR RICHMOND MARSH

BIOGRAPHICAL SKETCH OF HALLAM

HENRY HALLAM was born at Windsor, on July 9, 1777 He was the only son of Dr John Hallam, Canon of Windsor from 1775 to 1812, and Dean of Bristol from 1781 to 1800, a man of high character, and well read in literature The Hallams had long been settled at Boston in Lincolnshire, and one member of the family was Robert Hallam, Bishop of Salisbury Hallam's mother, a sister of Dr Roberts, Provost of Eton, was a woman of much intelligence and delicacy of feeling

Hallam was a precocious child He is said to have read many books when four years old, and is credited with having composed sonnets at ten He was at Eton from 1790 to 1794, and some of his verses were published in the 'Musæ Etonienses" in 1795 Afterward he was at Christ Church Oxford, and was graduated B A in 1799 He was called to the bar, and practised law for some years on the Oxford circuit His father died in 1812, leaving him estates in Lincolnshire He was early appointed to a commissionership of stamps, a post with a good salary and light duties In 1807 he married Julia daughter of Sir Abraham Elton of Clevedon Court Somerset.

His independent means enabled him to withdraw from legal practice and devote himself to the study of history After ten years of assiduous labor he produced in 1818 his first great work, "A View of the State of Europe During the Middle Ages which immediately established his reputation A supplementary volume of Notes' was published in 1848 'The Constitutional History of England from the Accession of Henry VII to the Death of George II," followed in 1827 Before the completion of his next work he was deeply affected by the death of his eldest son Arthur Henry Hallam in 1833 His other son Henry Fitzmaurice Hallam died in 1850 I have' he wrote "warnings to gather my sheaves while I can."

He fulfilled his purpose by finishing "The Introduction to the Literature of Europe in the Fifteenth, Sixteenth, and Seventeenth Centuries," published during 1837 and 1838.

During the preparation of these works he lived a studious life, interrupted only by occasional travels. He was familiar with the best literary society of the time, well known to the Whig magnates, and a frequent visitor to Holland House and Bowood. His name is often mentioned in memoirs and diaries of the time, and always respectfully, although he never rivalled the conversational supremacy of his contemporaries, Sydney Smith and Macaulay. He took no part in active political life. As a commissioner of stamps he was excluded from Parliament, and after his resignation did not attempt to procure a seat After the death of his son Henry, he gave up the pension of £500 (granted, according to custom, upon his resignation), despite remonstrances upon the unusual nature of the step

Hallam's later years were clouded by the loss of his sons His domestic affections were unusually warm, and he was a man of singular generosity in money matters Considering his high position in literature and his wide acquaintance with distinguished persons, the records of his life are comparatively few He was warmly loved by all who knew him, but his dignified reticence and absorption in exacting researches prevented him from coming often under public notice. He died peacefully, after many years of retirement, on January 21, 1859

Hallam had eleven children, seven of whom died in infancy. The early demise of his two promising sons, Arthur and Henry, has been referred to above. His daughter, Ellen, died in 1837, and Julia married Captain Cator, afterward Sir John Farnaby Lennard Hallam had one sister, who died unmarried, and bequeathed her fortune to him.

HALLAM'S PREFACE

TO THE FIRST EDITION.

IT IS the object of the present work to exhibit, in a series of historical dissertations, a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the Middle Ages. Such an undertaking must necessarily fall under the class of historical abridgments: yet there will perhaps be found enough to distinguish it from such as have already appeared. Many considerable portions of time, especially before the twelfth century, may justly be deemed so barren of events worthy of remembrance, that a single sentence or paragraph is often sufficient to give the character of entire generations and of long dynasties of obscure kings.

"Non ragioniam di lor, ma guarda e passa."

And even in the more pleasing and instructive parts of this middle period it has been my object to avoid the dry composition of annals, and aiming, with what spirit and freedom I could, at a just outline rather than a miniature, to suppress all events that did not appear essentially concatenated with others, or illustrative of important conclusions. But as the modes of government and constitutional laws which prevailed in various countries of Europe, and especially in England, seemed to have been less fully dwelt upon in former works of this description than military or civil transactions, while they were deserving of far more attention, I have taken pains to give a true representation of them, and in every instance to point out the sources from which the reader may derive more complete and original information.

Nothing can be farther from my wishes than that the following pages should be judged according to the critical laws

of historical composition. Tried in such a balance they would be eminently defective. The limited extent of this work, compared with the subjects it embraces, as well as its partaking more of the character of political dissertation than of narrative, must necessarily preclude that circumstantial delineation of events and of characters upon which the beauty as well as usefulness of a regular history so mainly depends. Nor can I venture to assert that it will be found altogether perspicuous to those who are destitute of any previous acquaintance with the period to which it relates; though I have only presupposed, strictly speaking, a knowledge of the common facts of English history, and have endeavored to avoid, in treating of other countries, those allusive references which imply more information in the reader than the author designs to communicate. But the arrangement which I have adopted has sometimes rendered it necessary to anticipate both names and facts which are to find a more definite place in a subsequent part of the work.

This arrangement is probably different from that of any former historical retrospect Every chapter of the following volumes completes its particular subject, and may be considered in some degree as independent of the rest. The order consequently in which they are read will not be very material, though of course I should rather prefer that in which they are at present disposed. A solicitude to avoid continual transitions, and to give free scope to the natural association of connected facts, has dictated this arrangement, to which I confess myself partial And I have found its inconveniences so trifling in composition, that I cannot believe they will occasion much trouble to the reader.

The first chapter comprises the history of France from the invasion of Clovis to the expedition, *exclusively*, of Charles VIII. against Naples It is not possible to fix accurate limits to the Middle Ages; but though the ten centuries from the fifth to the fifteenth seem, in a general point of view, to constitute that period, a less arbitrary division was necessary to render the commencement and conclusion of an historical narrative satisfactory The continuous chain of transactions on the stage of human society is ill divided by mere lines of chronological demarcation But as the subversion of the western empire is manifestly the natural termination of

ancient history, so the establishment of the Franks in Gaul appears the most convenient epoch for the commencement of a new period Less difficulty occurred in finding the other limit The invasion of Naples by Charles VIII was the event that first engaged the principal states of Europe in relations of alliance or hostility which may be deduced to the present day, and is the point at which every man who traces backwards its political history will be obliged to pause. It furnishes a determinate epoch in the annals of Italy and France, and nearly coincides with events which naturally terminate the history of the Middle Ages in other countries

The feudal system is treated in the second chapter, which I have subjoined to the history of France, with which it has a near connection Inquiries into the antiquities of that jurisprudence occupied more attention in the last age than the present, and their dryness may prove repulsive to many readers But there is no royal road to the knowledge of law, nor can any man render an obscure and intricate disquisition either perspicuous or entertaining That the feudal system is an important branch of historical knowledge will not be disputed, when we consider not only its influence upon our own constitution, but that one of the parties which at present divide a neighboring kingdom professes to appeal to the original principles of its monarchy, as they subsisted before the subversion of that polity

The four succeeding chapters contain a sketch, more or less rapid and general, of the histories of Italy, of Spain, of Germany, and of the Greek and Saracenic empires In the seventh I have endeavored to develop the progress of ecclesiastical power, a subject eminently distinguishing the Middle Ages, and of which a concise and impartial delineation has long been desirable

The English constitution furnishes materials for the eighth chapter I cannot hope to have done sufficient justice to this theme, which has cost me considerable labor, but it is worthy of remark, that since the treatise of Nathaniel Bacon, itself open to much exception, there has been no historical development of our constitution, founded upon extensive researches, or calculated to give a just notion of its character For those parts of Henry's history which profess to trace the progress of government are still more jejune than the rest of his vol-

which had been imperfectly or obscurely treated, and to acknowledge with freedom my own errors. It appeared most convenient to adopt a form of publication by which the possessors of any edition may have the advantage of these Supplemental Notes, which will not much affect the value of their copy.

The first two Chapters, on the History of France and on the Feudal System, have been found to require a good deal of improvement. As a history, indeed, of the briefest kind, the first pages are insufficient for those who have little previous knowledge; and this I have, of course, not been able well to cure. The second Chapter embraces subjects which have peculiarly drawn the attention of Continental writers for the last thirty years. The whole history of France, civil, constitutional, and social, has been more philosophically examined, and yet with a more copious erudition, by which philosophy must always be guided, than in any former age. Two writers of high name have given the world a regular history of that country—one for modern as well as mediæval times, the other for these alone. The great historian of the Italian republics, my guide and companion in that portion of the "History of the Middle Ages," published in 1821 the first volumes of his "History of the French"; it is well known that this labor of twenty years was very nearly terminated when he was removed from the world. The two histories of Sismondi will, in all likelihood, never be superseded; if in the latter we sometimes miss, and yet we do not always miss, the glowing and vivid pencil, guided by the ardor of youth and the distinct remembrance of scenery, we find no inferiority in justness of thought, in copiousness of narration, and especially in love of virtue and indignation at wrong It seems, indeed, as if the progress of years had heightened the stern sentiments of republicanism with which he set out, and to which the whole course of his later work must have afforded no gratification, except that of scorn and severity. Measuring not only their actions but characters by a rigid standard, he sometimes demands from the men of past times more than human frailty and ignorance could have given; and his history would leave but a painful impression from the gloominess of the picture, were not this constantly relieved by the peculiar softness and easy grace of his style. It cannot be said

that Sismondi is very diligent in probing obscurities or in weighing evidence, his general views, with which most of his chapters begin, are luminous and valuable to the ordinary reader, but sometimes sketched too loosely for the critical investigator of history

Less full than Sismondi in the general details, but seizing particular events or epochs with greater minuteness and accuracy—not emulating his full and flowing periods, but in a style concise, rapid, and emphatic, sparkling with new and brilliant analogies—picturesque in description, spirited in sentiment, a poet in all but his fidelity to truth—M Michelet has placed his own "History of France" by the side of that of Sismondi His quotations are more numerous, for Sismondi commonly gives only references, and when interwoven with the text, as they often are, though not quite according to the strict laws of composition, not only bear with them the proof which an historical assertion may fail to command, but exhibit a more vivid picture

In praising M Michelet we are not to forget his defects His pencil, always spirited, does not always fill the canvas The consecutive history of France will not be so well learned, from his pages as from those of Sismondi, and we should protest against his peculiar bitterness towards England were it not ridiculous in itself by its frequency and exaggeration

I turn with more respect to a great name in historical literature and which is only less great in that sense than it might have been, because it belongs also to the groundwork of all future history—the whole series of events which have been developed on the scene of Europe for twenty years now past No envy of faction no caprice of fortune, can tear from M Guizot the trophy which time has bestowed, that he for nearly eight years past and irrevocable, held in his firm grasp a power so fleeting before and fell only with the monarchy which he had sustained in the convulsive throes of his country

"Cras vel atrâ
Nube polum Pater occupato,
Vel sole puro non tamen irritum
Quodcunque retro est efficiet

It has remained for my distinguished friend to manifest that high attribute of a great man's mind—a constant and unsub-

umes; and the work of Professor Millar, of Glasgow, however pleasing from its liberal spirit, displays a fault too common among the philosophers of his country, that of theorizing upon an imperfect induction, and very often upon a total misapprehension of particular facts.

The ninth and last chapter relates to the general state of society in Europe during the Middle Ages, and comprehends the history of commerce, of manners, and of literature. None, however, of these are treated in detail, and the whole chapter is chiefly designed as supplemental to the rest, in order to vary the relations under which events may be viewed, and to give a more adequate sense of the spirit and character of the Middle Ages

In the execution of a plan far more comprehensive than what with a due consideration either of my abilities or opportunities I ought to have undertaken, it would be strangely presumptuous to hope that I can have rendered myself invulnerable to criticism. Even if flagrant errors should not be frequently detected, yet I am aware that a desire of conciseness has prevented the sense of some passages from appearing sufficiently distinct; and though I cannot hold myself generally responsible for omissions, in a work which could only be brought within a reasonable compass by the severe retrenchment of superfluous matter, it is highly probable that defective information, forgetfulness, or too great a regard for brevity, have caused me to pass over many things which would have materially illustrated the various subjects of these inquiries

I dare not, therefore, appeal with confidence to the tribunal of those superior judges who, having bestowed a more undivided attention on the particular objects that have interested them, many justly deem such general sketches imperfect and superficial; but my labors will not have proved fruitless if they shall conduce to stimulate the reflection, to guide the researches, to correct the prejudices, or to animate the liberal and virtuous sentiments of inquisitive youth:

"Mi satis ampla
Merces, et mihi grande decus, sim ignotus in ævum
Tum licet, externo penitusque inglorius orbi."

April, 1818.

HALLAM'S PREFACE

TO THE SUPPLEMENTAL NOTES.

THIRTY years have elapsed since the publication of the work to which the following notes relate, and almost forty since the first chapter and part of the second were written. The occupations of that time rendered it impossible for me to bestow such undivided attention as so laborious and difficult an undertaking demanded; and at the outset I had very little intention of prosecuting my researches, even to that degree of exactness which a growing interest in the ascertainment of precise truth, and a sense of its difficulty, led me afterwards in some parts to seek, though nowhere equal to what with a fuller command of time I should have desired to attain. A measure of public approbation accorded to me far beyond my hopes has not blinded my discernment to the deficiencies of my own performance; and as successive editions have been called for, I have continually felt that there was more to correct or to elucidate than the insertion of a few foot-notes would supply, while I was always reluctant to make such alterations as would leave to the purchasers of former editions a right to complain. From an author whose science is continually progressive, such as chemistry or geology, this is unavoidably expected; but I thought the case not quite the same with a mediæval historian.

In the mean time, however, the long period of the Middle Ages had been investigated by many of my distinguished contemporaries with signal success, and I have been anxious to bring my own volumes nearer to the boundaries of the historic domain, as it has been enlarged within our own age. My object has been, accordingly, to reconsider those portions of the work which relate to subjects discussed by eminent writers since its publication, to illustrate and enlarge some passages

dued spirit in adversity, and to turn once more to those tranquil pursuits of earlier days which bestow a more unmingled enjoyment and a more unenvied glory than the favor of kings or the applause of senates

The "Essais sur l'Histoire de France," by M. Guizot, appeared in 1820; the "Collection de Mémoires relatives à l'Histoire de France" (a translation generally from the Latin, under his superintendence and with notes by him), if I mistake not, in 1825; the Lectures on the civilization of Europe, and on that of France, are of different dates, some of the latter in 1829 These form, by the confession of all, a sort of epoch in mediæval history by their philosophical acuteness, the judicious choice of their subjects, and the general solidity and truth of the views which they present.

I am almost unwilling to mention several other eminent names, lest it should seem invidious to omit any. It will sufficiently appear by these Notes to whom I have been most indebted. Yet the writings of Thierry, Fauriel, Raynouard, and, not less valuable, though in time almost the latest, Lehuerou, ought not to be passed in silence I shall not attempt to characterize these eminent men; but the gratitude of every inquirer into the mediæval history of France is especially due to the Ministry of Public Instruction under the late government for the numerous volumes of Documens Inédits, illustrating that history, which have appeared under its superintendence, and at the public expense, within the last twelve years. It is difficult not to feel, at the present juncture, the greatest apprehension that this valuable publication will at least be suspended.

Several Chapters which follow the second in my volumes have furnished no great store of additions; but that which relates to the English Constitution has appeared to require more illustration Many subjects of no trifling importance in the history of our ancient institutions had drawn the attention of men very conversant with its best sources; and it was naturally my desire to impart in some measure the substance of their researches to my readers In not many instances have I seen ground for materially altering my own views; and I have not of course hesitated to differ from those whom I often quote with much respect The publications of the Record Commission—the celebrated Report of the Lords' Com-

mittee on the Dignity of a Peer—the work of my learned and gifted friend Sir Francis Palgrave, On the Rise and Progress of the English Commonwealth, replete with omnifarious reading and fearless spirit, though not always commanding the assent of more sceptical tempers—the approved and valuable contributions to constitutional learning by Allen, Kemble, Spence, Starkie, Nicolas, Wright, and many others —are full of important facts and enlightened theories. Yet I fear that I shall be found to have overlooked much, especially in that periodical literature which is too apt to escape our observation or our memory; and can only hope that these Notes, imperfect as they must be, will serve to extend the knowledge of my readers and guide them to the sources of historic truth. They claim only to be supplemental, and can be of no service to those who do not already possess the "History of the Middle Ages."

The paging of the editions of 1826 and 1841, one in three volumes, the other in two, has been marked for each Note, which will prevent, I hope, all inconvenience in reference.*

June, 1848.

* In the present edition the "Supplemental Notes" have been incorporated with the original work, partly at the foot of the pages, partly at the close of chapters.

CHOICE EXAMPLES OF BOOK ILLUMINATION.

Fac-similes from Illuminated Manuscripts and Illustrated Books of Early Date.

ecclesiasticorum
vanitatem meritorum
Qui cum audisset
quia ihs nazarenus e
coepit clamare et dicere
re. Fili dauid ihu mi
serere mei Et com
minabantur ei multi
ut taceret At ille
multo magis cla
mabat. Filii dauid
miserere mei Et stans
ihs Iussit eum vocari
Vocant et dicunt illum
dicentes ei Confide
surge vocat te. Quo proiecto
vestimento suo exi
liens venit ad ihm
Respondens ihs dixit
illi Quid tibi vis faciam
Cecus autem dixit
Magister ut videam
Ihs Autem dixit illi
Respice fides tua
te saluum fecit Et con
festim vidit Et secutus
est eum in
Factum est autem cum
iret ihs hierosolymam

et transiret per medium
eorum discipulis suis
et turbis illis Ihe pha
risei quod esset con
tra eos et despectui
habentes illud Nue
ro pullum asine re
pererunt quem nemo ho
minum ascendit
solutum illum et adduc
unt Et quidam ex illis
qui stabant dicebant
illis Quid facitis solu
entes pullum Qui dixe
runt sicut precepit
illis ihs Et dimise
runt eis Et adduc
unt pullum ad ihm
et imponunt ei ves
timenta sua et sedit
super eum Multi ve

ILLUSTRATIONS

FACING PAGE

THE LAST PRAYER — *Frontispiece*
Photogravure from a painting

A PAGE FROM THE GOLDEN GOSPELS — xx
Fac simile illumination of the Seventh Century

THE EMPEROR MAXIMILIAN (Portrait) — 118
Fac simile example of Printing and Engraving in the Sixteenth Century

BOOK I.

THE HISTORY OF FRANCE.

empire, and governed by a certain Syagrius, rather with an independent than a deputed authority

At this time Clovis, king of the Salian Franks, a tribe of Germans long connected with Rome, and originally settled upon the right bank of the Rhine,[b] but who had latterly penetrated as far as Tournay and Cambray,[c] invaded Gaul, and defeated Syagrius at Soissons [A D 486] The result of this victory was the subjugation of those provinces which had previously been considered as Roman But as their allegiance had not been very strict, so their loss was not very severely felt, since the emperors of Constantinople were not too proud to confer upon Clovis the titles of consul and patrician, which he was too prudent to refuse[d]

Some years after this, Clovis defeated the Alemanni, or Swabians, in a great battle at Zulpich, near Cologne In consequence of a vow, as it is said, made during this engagement,[e] and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity [A D 496] It would be a fruitless inquiry whether he was sincere in this change, but it is certain, at least, that no policy could have been more successful The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance,[f] in the Burgundian

[b] [Note II]

[c] The system of Pere Dan el who de n es any permanent settlement of the Franks on the left bank of the Rhine before Clovis seems incapable of being supported It is difficult to resist the presumption that arises from the d s- covery of the tomb and skeleton of Childeric, father of Clovis at Tournay in 1653 See Montfaucon Monumens de la Monarchie Franç a se tome i p. 10

[d] The theory of Dubos who considers Clovis as a sort of lieutenant of the em perors and as governing the Roman part of his subjects by no other t tle has justly seemed extravagant to later criti cal inqu rers nto the history of France But it may nevertheless be true that the connection between h m and t l e em pire and the emblems of Roman magis- tracy wh ch he bore, reconciled the conquered to the r new masters Th s is judiciously stated by the Duke de Nivernois, Mém de l'Acad des In scrip. tome xx p 174 [Note III] In the sixth century however the Greeks appear to have been nearly ig norant of Clovis s countrymen Noth ing can be made out of a passage in Procopius where he seems to ment on the Armoricans under the name Ἀρβόρυχοι and Agathias gives a strangely romantic account of the Franks whom he extols for their conform ity to Roman Laws πολιτε α ως τα πολλὰ χρωνται Ρωμαικῃ κα νομο ς το ς αυτο ς και τὰ ἄλλα ὁμοιως αμφι τε τα συμβόλαια καὶ γαμους καὶ την του θε ου θεραπειαν νομ ζουσι εμο γε δοκουσι σφὸδρα εἶναι κόσμιοι τε και αστειό τατοι, ουδεν τε εχειν τὸ διαλλαττον, η μόνον τὸ βαρβαρικον της στολης καὶ τὸ της φωνης δ αζον He goes on to commend their mutual union, and observes particularly that in partitions of the kingdom which had frequently been made they had never taken up arms aga nst each other nor polluted the land with civil bloodshed One would almost bel eve h m iron cal The history of Agath as comes down to A D 559 At this time many of the savage murders and other crimes which fill the pages of Gregory of Tours a writer somewhat more likely to know the truth than a Byzantine rhetorician had taken place

[e] Gregory of Tours makes a very rhe- torical story of th s famous vow which though we cannot disprove it may be perm tted to suspect —L. ii c 30.

[f] Hist. de Languedoc, par Vich et Vaissette tome i p 238 Gibbon c. 37 A spec ous objection might be drawn from the h story of the Gothic mon arch es in Italy as well as Gaul and Spa n to the great princ ples of re

and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and, even before his conversion, had favored the arms of Clovis. They now became his most zealous supporters, and were rewarded by him with artful gratitude, and by his descendants with lavish munificence Upon the pretence of religion, he attacked Alaric, king of the Visigoths, and, by one great victory near Poitiers overthrowing their empire in Gaul, reduced them to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees [A D 507] The last exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighborhood of the Rhine *g* All these he put to death by force or treachery, for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendor and the guiltiness of his ambition *h*

ligious toleration These Arian sovereigns treated their Catholic subjects, it may be said with tenderness, leaving them in possession of every civil privilege and were rewarded for it by their defection or sedition But in answer to this it may be observed —1 That the system of persecution adopted by the Vandals in Africa succeeded no better the Catholics of that province having risen against them upon the landing of Belisarius 2 That we do not know what insults and discouragements the Catholics of Gaul and Italy may have endured especially from the Arian bishops in that age of bigotry although the administrations of Alaric and Theodoric were liberal and tolerant 3 That the distinction of Arian and Catholic was intimately connected with that of Goth and Roman of conqueror and conquered so that it is difficult to separate the effects of national from those of sectarian animosity

The tolerance of the Visigoth sovereigns must not be praised without making an exception for Euric predecessor of Alaric He was a prince of some eminent qualities but so zealous in his religion as to bear hardly on his Catholic subjects Sidonius Apollinaris loudly proclaims that no bishoprics were permitted to be filled that the churches went to ruin and that Arianism made a great progress (Fauriel Hist de la Gaule Meridionale vol i p 578.) Under Alaric himself however, as well as under the earlier kings of the Visigothic dynasty a more liberal spirit prevailed Salvian about the middle of the fifth century extols the Visigothic government in comparison with that of the empire whose vices and despotism had met with a deserved termination. Ruricius speaks of the Burgundians in the same manner (Id. ibid and vol ii p 28.) Yet it must have been in itself mortifying to live in subjection to barbarians and heretics not to mention the hospitality as it was called which the natives were obliged to exercise towards the invaders by ceding two-thirds of their lands What, then must the Western empire have been when such a condition was comparatively enviable! But it is more than probable that the Gaulish bishops subject to the Visigoths hailed the invasion of the Franks with sanguine hope and were undoubtedly great gainers by the exchange

g Modern historians in enumerating these *reguli* call one of them King of Mans But it is difficult to understand how a chieftain independent of Clovis could have been settled in that part of France In fact Gregory of Tours our only authority does not say that this prince Regnomeris was King of Mans but that he was put to death in that city apud Cenomannis civitatem jussu Chlodovechi interfectus est

The late French writers as far as I have observed continue to place a kingdom at Mans It is certain nevertheless that Gregory of Tours and they have no other evidence does not assert this and his expressions rather lead to the contrary since if Regnomeris were King of Mans why should we not have been informed of it? It is indeed impossible to determine such a point negatively from our scanty materials but if a Frank kingdom had been formed at Mans before the battle of Soissons, this must considerably alter the received notions of the history of Gaul in the fifth century and it seems difficult to understand how it could have sprung up afterwards during the reign of Clovis.

h The reader will be gratified by an

Clovis left four sons; one illegitimate, or at least born before his conversion; and three by his queen Clotilda [A.D. 511.] These four made, it is said, an equal partition of his dominions, which comprehended not only France, but the western and central parts of Germany, besides Bavaria, and perhaps Swabia, which were governed by their own dependent, but hereditary, chiefs. Thierry, the eldest, had what was called Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert, at Paris; and Clotaire, at Soissons.[1] During their reigns the monarchy was aggrandized by the conquest of Burgundy. Clotaire, the youngest brother, ultimately reunited all the kingdoms [A.D. 558]; but upon his death they were again divided among his four sons, and brought together a second time by another Clotaire, the grandson to the first. [A.D. 613.] It is a weary and unprofitable task to follow these changes in detail, through scenes of tumult and bloodshed, in which the eye meets with no sunshine, nor can rest upon any interesting spot. It would be difficult, as Gibbon has justly observed, to find anywhere more vice or less

admirable memoir, by the Duke de Nivernois, on the policy of Clovis in the twentieth volume of the Academy of Inscriptions.

[1] Quatuor filii regnum accipiunt, et inter se æquâ lance dividunt.—Greg. Tur. l. iii. c. 1. It would rather perplex a geographer to make an equal division of Clovis's empire into portions of which Paris, Orleans, Metz and Soissons should be the respective capitals. I apprehend in fact, that Gregory's expression is not very precise. The kingdom of Soissons seems to have been the least of the four, and that of Austrasia the greatest. But the partitions made by these princes were exceedingly complex, insulated fragments of territory, and even undivided shares of cities, being allotted to the worse provided brothers by way of compensation out of the larger kingdoms. It would be very difficult to ascertain the limits of these minor monarchies. But the French empire was always considered as one whatever might be the number of its inheritors, and from accidental circumstances it was so frequently reunited as fully to keep up this notion.

M. Fauriel endeavors to show the equality of this partition. (Hist. de la Gaule Méridionale, vol. ii. p. 92.) But he is obliged to suppose that Germany beyond the Rhine, part of which owned the dominion of Clovis, was counted as nothing, not being inhabited by Franks. It was something nevertheless, in the scale of power, since from this fertile source the Austrasian kings continually recruited their armies. Aquitaine, that is, the provinces south of the Loire, was divided into three, or rather perhaps two portions. For though Thierry and Childebert had considerable territories, it seems not certain that Clodomir took any share, and improbable that Clotaire had one.

Thierry, therefore, King of Austrasia, may be reckoned the best provided of the brethren. It will be obvious from the map that the four capitals, Metz, Soissons, Paris and Orleans, are situated at no great distance from each other, relatively to the whole of France. They were therefore, in the centre of force, and the brothers might have lent assistance to each other in case of a national revolt.

The cause of this complexity in the partition of France among the sons of Clovis has been conjectured by Dubos, with whom Sismondi (vol. i. p. 242) agrees, to have been their desire of owning as subjects an equal number of Franks. This is supported by a passage in Agathias, quoted by the former, Hist. de l'Etablissement, vol. ii. p. 413. Others have fancied that Aquitaine was reckoned too delicious a morsel to be enjoyed by only one brother. In the second great partition, that of 567 (for that of 561 did not last long), when Sigebert, Gontran, and Chilperic took the kingdoms of Austrasia, Burgundy, and what was afterwards called Neustria, the southern provinces were again equally divided. Thus Marseilles fell to the king of Paris or Neustria, while Aix and Avignon were in the lot of Burgundy.

virtue. The names of two queens are distinguished even in that age for the magnitude of their crimes: Fredegonde, the wife of Chilperic, of whose atrocities none have doubted; and Brunehaut, Queen of Austrasia, who has met with advocates in modern times, less, perhaps, from any fair presumptions of her innocence than from compassion for the cruel death which she underwent.*j*

But after Dagobert, son of Clotaire II., the kings of France dwindled into personal insignificance, and are generally treated by later historians as insensati, or idiots.*k* The whole power of the kingdom devolved upon the mayors of the palace, originally officers of the household, through whom petitions or representations were laid before the king.*l* The weakness of sovereigns rendered this office important, and still greater weakness suffered it to become elective; men of energetic talents and ambition united it with military command; and the history of France for half a century presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neustria and Austrasia, the western and eastern divisions of the French monarchy.*m* These, however, met with violent

j Every history will give a sufficient epitome of the Merovingian dynasty. The facts of these times are of little other importance than as they impress on the mind a thorough notion of the extreme wickedness of almost every person concerned in them, and consequently of the state to which society was reduced. But there is no advantage in crowding the memory with barbarian wars and assassinations. [Note IV.]

For the question about Brunehaut's character, who has had partisans almost as enthusiastic as those of Mary of Scotland, the reader may consult Pasquier, Recherches de la France, viii., or Velly, Hist. de France tome i., on one side, and a dissertation by Gaillard, in the Memoirs of the Academy of Inscriptions, tome xxx., on the other. The last is unfavorable to Brunehaut, and perfectly satisfactory to my judgment.

Brunehaut was no unimportant personage in this history. She had become hateful to the Austrasian aristocracy by her Gothic blood and still more by her Roman principles of government. There was evidently a combination to throw off the yoke of civilized tyranny. It was a great conflict, which ended in the virtual dethronement of the house of Clovis. Much, therefore, may have been exaggerated by Fredegarius, a Burgundian by birth, in relating the crimes of Brunehaut. But, unhappily, the antecedent presumption, in the history of that age, is always on the worse side. She was unquestionably endowed with a masculine energy of mind, and very superior to such a mere imp of audacious wickedness as Fredegonde. Brunehaut left a great and almost fabulous name. public causeways, towers, castles, in different parts of France, are popularly ascribed to her. It has even been suspected by some that she suggested the appellation of Brunhild in the Nibelungen Lied. That there is no resemblance in the story, or in the character, courage excepted, of the two heroines, cannot be thought an objection.

k An ingenious attempt is made by the Abbé Vertot (Mém. de l'Académie, tome vi., to rescue these monarchs from this long established imputation. But the leading fact is irresistible, that all the royal authority was lost during their reigns. However the best apology seems to be, that after the victories of Pepin Heristal, the Merovingian kings were, in effect, conquered, and their inefficiency was a matter of necessary submission to a master.

l [Note V.]

m The original kingdoms of Soissons, Paris, and Orleans were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine, the exact bounds of which I do not know, was, from the time of Dagobert I., separated from the rest of

ends, but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterwards duke, of Austrasia, who united with almost an avowed sovereignty over that division a paramount command over the French or Neustrian provinces, where nominal kings of the Merovingian family were still permitted to exist[n] This authority he transmitted to a more renowned hero, his son, Charles Martel, who, after some less important exploits, was called upon to encounter a new and terrible enemy The Saracens, after subjugating Spain had penetrated into the very heart of France Charles Martel gained a complete victory over them between Tours and Poitiers[o] in which 300 000 Mohammedans are hyperbolically asserted to have fallen [A D 732] The reward of this victory was the province of Septimania, which the Saracens had conquered from the Visigoths[p]

Such powerful subjects were not likely to remain long contented without the crown, but the circumstances under which it was transferred from the race of Clovis are connected with one of the most important revolutions in the history of Europe The mayor Pepin, inheriting his father Charles Martel's talents and ambition, made in the name and with the consent of the nation, a solemn reference to the Pope Zacharias, as to the deposition of Childeric III, under whose nominal authority he himself was reigning The decision was favorable, that he who possessed the power should also bear the title of king The unfortunate Merovingian was dismissed into a convent, and the Franks, with one consent, raised Pepin to the throne,

the monarchy under a ducal dynasty sprung from Ar bert brother of that monarch. [Note VI]

n [Note VII]

o Tours s above seventy m les d stant from I o t ers but I do not find that any French ant quary has been able to asserta n the place of th s great battle w th more prec s on wh ch s remarkable s nce after so immense a s aughter we shou d expect the test mony of grand a effoss a ossa sepulcr s. It is now however bel eved that the slaughter at the battle near Po t ers was by no means immense and even that the Saracens ret red w thout a decis ve act on (S smond i 132 M chelet ii 13) There can be no dou t but that the battle was fo ght much nearer to Po t ers than to Tours.

The v ctory of Charles Martel has immortalized h s name and may justly be reckoned among those few battles of wh ch a con rary event would have essentially varied the drama of the world in all ts subsequent scenes w th Mara thon Arbela the Metaurus Chalons and Le ps c. Yet do we not judge a l ttle too much by the event, and fol ow as usual in the wake of fortune? Has not more frequent exper ence condemned those who set the fate of em p res upon a s ngle cast and risk a general battle w th invaders whose greater peril s in delay? Was not th s t e fatal error by wh ch Rodet c had lost h s k ngdom? Was it possible that the Saracens could have reta ned any permanent possess on of France except by means of a victory? And d d not the contest upon the broad champa gn of Po tou afford them a considerable prospect of success wh ch a more caut ous pol cy would have w thheld?

p Th s conquest was completed by Pep n in 759 The inhab tants preserved their l bert es by treaty and Va ssette deduces from th s solemn ass rance the privileges of Languedoc. —Hist. de Lang tome i. p. 412.

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more than a titular subjection The Spanish boundary, as has been said already, was the Ebro *x*

A seal was put to the glory of Charlemagne when Leo III, in the name of the Roman people, placed upon his head the imperial crown [A D 800] His father, Pepin had borne the title of Patrician, and he had himself exercised, with that title, a regular sovereignty over Rome *y* Money was coined in his name and an oath of fidelity was taken by the clergy and people But the appellation of Emperor seemed to place his authority over all his subjects on a new footing It was full of high and indefinite pretension, tending to overshadow the free election of the Franks by a fictitious descent from Augustus A fresh oath of fidelity to him as emperor was demanded from his subjects His own discretion, however, prevented him from affecting those more despotic prerogatives which the imperial name might still be supposed to convey *z*

In analyzing the characters of heroes it is hardly possible to separate altogether the share of fortune from their own The epoch made by Charlemagne in the history of the world the illustrious families which prided themselves in him as their progenitor, the very legends of romance, which are full of his fabulous exploits, have cast a lustre around his head, and testify the greatness that has embodied itself in his name None, indeed of Charlemagne s wars can be compared with the Saracenic victory of Charles Martel, but that was a contest for freedom his for conquest, and fame is more partial to successful aggression than to patriotic resistance As a scholar his

x I follow in this the map of Koch in his Tableau des Révolutions de l Europe tome i That of Vaugondy Paris 1752 includes the dependent Sclavonic tribes and carries the limit of the empire to the Oder and frontiers of Poland The authors of L Art de vérifier les Dates extend it to the Raab It would require a long examination to give a precise statement

y The Patricians of the lower empire were governors sent from Constantinople to the provinces Rome had long been accustomed to the name and power The subjection of the Romans both clergy and laity to Charlemagne as well before as after he bore the imperial name seems to be established See Dissertation Historique par le Blanc subjoined to his Traite de Monnoyes de France p 18 and St Marc Abrégé Chronologique de l Histoire de l Italie t i The first of these writers does not allow that Pepin exercised any authority at Rome A good deal of obscurity rests over its internal government for nearly fifty years, but there is some reason to believe that the nominal sovereignty of the Greek emperors was not entirely abrogated Muratori Annali d Italia ad ann 772 St Marc t i pp 356 372 A mosaic still extant in the Lateran palace represents our Saviour giving the keys to St Peter with one hand and with the other a standard to a crowned prince bearing the inscription Constantine V But Constantine V did not begin to reign till 780 and if this piece of workmanship was made under Leo III as the authors of L Art de verifier les Dates imagine it could not be earlier than 795 T i p 262 Muratori ad ann 798 However this may be there can be no question that a considerable share of jurisdiction and authority was practically exercised by the popes during this period V d Murat. ad ann. 789.

z [Note X]

acquisitions were probably little superior to those of his unrespected son and in several points of view the glory of Charlemagne might be extenuated by an analytical dissection *a* But rejecting a mode of judging equally uncandid and fallacious we shall find that he possessed in everything that grandeur of conception which distinguishes extraordinary minds Like Alexander he seemed born for universal innovation in a life restlessly active we see him reforming the coinage and establishing the legal divisions of money, gathering about him the learned of every country founding schools and collecting libraries interfering but with the tone of a king in religious controversies aiming though prematurely, at the formation of a naval force attempting for the sake of commerce the magnificent enterprise of uniting the Rhine and Danube *b* and meditating to mould the discordant codes of Roman and barbarian laws into an uniform system

The great qualities of Charlemagne were indeed alloyed by the vices of a barbarian and a conqueror Nine wives whom he divorced with very little ceremony attest the license of his private life which his temperance and frugality can hardly be said to redeem Unsparing of blood though not constitutionally cruel and wholly indifferent to the means which his ambition prescribed he beheaded in one day four thousand Saxons—an act of atrocious butchery after which his persecuting edicts pronouncing the pain of death against those who refused baptism or even who ate flesh during Lent seem scarcely worthy of notice This union of barbarous ferocity with elevated views of national improvement might suggest the parallel of Peter the Great But the degrading habits and brute violence of the Muscovite place him at an immense distance from the restorer of the empire

A strong sympathy for intellectual excellence was the leading characteristic of Charlemagne and this undoubtedly biassed him in the chief political error of his conduct—that of encouraging the power and pretensions of the hierarchy But perhaps his greatest eulogy is written in the disgraces of suc

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b See an essay upon this project in the Memoirs of the Academy of Inscriptions, t. xvii. The rivers which were designed to form the links of this junction were the Altmuhl, the Regnitz, and the Main; but their want of depth, and the sponginess of the soil, appear to present insuperable impediments to its completion.

The subsequent partitions made among the children of these brothers are of too rapid succession to be here related. In about forty years the empire was nearly reunited under Charles the Fat, son of Louis of Germany [Emperor A D. 881; King of France, 885]; but his short and inglorious reign ended in his deposition. [A D. 887.] From this time the possession of Italy was contested among her native princes; Germany fell at first to an illegitimate descendant of Charlemagne, and in a short time was entirely lost by his family; two kingdoms, afterwards united, were formed by usurpers out of what was then called Burgundy, and comprised the provinces between the Rhone and the Alps, with Franche Comté, and great part of Switzerland *k* In France the Carlovingian kings continued for another century; but their line was interrupted two or three times by the election or usurpation of a powerful family, the counts of Paris and Orleans, who ended, like the old mayors of the palace, in dispersing the phantoms of royalty they had professed to serve *l* [Kings of France: Eudes, A D 887; Charles the Simple, 898; Robert (?), 922; Ralph, 923; Louis IV, 936; Lothaire, 954; Louis V, 986; counts of Paris] Hugh Capet, the representative of this house upon the death of Louis V, placed himself upon the throne; thus founding the third and most permanent race of French sovereigns Before this happened, the descendants of Charlemagne had sunk into insignificance, and retained little more of France than the city of Laon The rest of the kingdom had been seized by the powerful

ce seroit le plus curieux de tous les monumens sur l etat de l Europe au moyen age." (Sismondi, Hist. des Franç iii 76) For this he quotes Nithard, a contemporary historian

In the division made on this occasion the kingdom of France which fell to Charles the Bald had for its eastern boundary the Meuse the Saone, and the Rhone, which nevertheless, can only be understood of the Upper Meuse, since Brabant was certainly not comprised in it Lothaire, the elder brother besides Italy, had a kingdom called Lorraine from his name (Lotharingia), extending from the mouth of the Rhine to Provence bounded by that river on one frontier by France on the other Louis took all beyond the Rhine, and was usually styled The Germanic.

k These kingdoms were denominated Provence and Transjurane Burgundy The latter was very small comprising only part of Switzerland but its second sovereign, Rodolph II, acquired by treaty almost the whole of the former, and the two united were called the kingdom of Arles. This lasted from 933 to 1032 when Rodolph III bequeathed his dominions to the Emperor Conrad II —Art de verifier les Dates, tom. ii. pp 427 432

l The family of Capet is generally admitted to possess the most ancient pedigree of any sovereign line in Europe Its succession through males is unequivocally deduced from Robert the Brave made governor of Anjou in 864, and father of Eudes King of France, and of Robert who was chosen by a party in 922 though as Charles the Simple was still acknowledged in some provinces, it is uncertain whether he ought to be counted in the royal list It is moreover highly probable that Robert the Brave was descended, equally through males from St Arnoul who died in 640 and consequently nearly allied to the Carlovingian family, who derive their pedigree from the same head —See Preuves de la Généalogie de Hughes Capet, in l Art de verifier les Dates tom. i. p 566.

Though the Greek dominions in the south of Italy were chiefly exposed to them, they twice insulted and ravaged the territory of Rome [A D 846-849], nor was there any security even in the neighborhood of the maritime Alps, where, early in the tenth century, they settled a piratical colony [p]

Much more formidable were the foes by whom Germany was assailed The Sclavonians, a widely extended people whose language is still spoken upon half the surface of Europe, had occupied the countries of Bohemia, Poland, and Pannonia [q] on the eastern confines of the empire, and from the time of Charlemagne acknowledged its superiority But at the end of the ninth century, a Tartarian tribe, the Hungarians, overspreading that country which since has borne their name and moving forward like a vast wave, brought a dreadful reverse upon Germany Their numbers were great, their ferocity untamed They fought with light cavalry and light armor, trusting to their showers of arrows, against which the swords and lances of the European armies could not avail The memory of Attila was renewed in the devastations of these savages who if they were not his compatriots resembled them both in their countenances and customs All Italy, all Germany, and the south of France felt this scourge,[r] till Henry the Fowler, and Otho the Great, drove them back by successive victories within their own limits [A D 934 954] where in a short time, they learned peaceful arts, adopted the religion and followed the policy of Christendom

If any enemies could be more destructive than these Hungarians, they were the pirates of the north known commonly by the name of Normans The love of a predatory life seems to have attracted adventurers of different nations to the Scandi-

[p] Muratori Annal d Italia ad ann 906, et alibi These Saracens of Frassineto supposed to be between Nice and Monaco were extirpated by a count of Provence in 973 But they had established themselves more inland than Frassineto. Creeping up the line of the Alps they took possession of St. Maurice, in the Valais, from which the feeble kings of Transjurane Burgundy could not dislodge them

[q] I am sensible of the awkward effect of introducing this name from a more ancient geography but it saves a circumlocution still more awkward Austria would convey an imperfect idea, and the Austrian dominions could not be named without a tremendous anachronism.

[r] In 924 they overran Languedoc Raymond Pons, Count of Toulouse cut their army to pieces but they had previously committed such ravages that the bishops of that province, writing soon afterwards to Pope John X assert that scarcely any eminent ecclesiastic out of a great number were left alive —Hist de Languedoc tome ii p 60. They penetrated into Guienne as late as 951—Flodoard Chronicon in Recueil des Historiens tome viii In Italy they inspired such terror that a mass was composed expressly deprecating this calamity Ab Ungerorum nos defendas jaculis! In 937 they ravaged the country as far as Benevento and Capua.—Muratori Ann. d Italia.

navian seas, from whence they infested, not only by maritime piracy, but continual invasions, the northern coasts both of France and Germany The causes of their sudden appearance are inexplicable, or at least could only be sought in the ancient traditions of Scandinavia For, undoubtedly, the coasts of France and England were as little protected from depredations under the Merovingian kings, and those of the Heptarchy, as in subsequent times Yet only one instance of an attack from this side is recorded, and that before the middle of the sixth century,[s] till the age of Charlemagne In 787 the Danes, as we call those northern plunderers, began to infest England, which lay most immediately open to their incursions Soon afterwards they ravaged the coasts of France Charlemagne repulsed them by means of his fleets, yet they pillaged a few places during his reign It is said that, perceiving one day, from a port in the Mediterranean, some Norman vessels, which had penetrated into that sea, he shed tears, in anticipation of the miseries which awaited his empire[t] In Louis's reign their depredations upon the coast were more incessant,[u] but they did not penetrate into the inland country till that of Charles the Bald The wars between that prince and his family, which exhausted France of her noblest blood, the insubordination of the provincial governors, even the instigation of some of Charles's enemies, laid all open to their inroads They adopted an uniform plan of warfare both in France and England, sailing up navigable rivers in their vessels of small burden, and fortifying the islands which they occasionally found, they made these intrenchments at once an asylum for their women and children, a repository for their plunder, and a place of retreat from superior force After pillaging a town they retired to these strongholds or to their ships, and it was not till 872 that they ventured to keep possession of Angers, which, however, they were compelled to evacuate Sixteen years afterwards they laid siege to Paris, and committed the most ruinous devas-

s Greg Turon l m c 3

t In the ninth century the Norman pirates not only ravaged the Balearic isles and nearer coasts of the Mediterranean but even Greece—De Marca, Marca Hispanica, p 327

u Nigellus the poetical biographer of Louis gives the following description of the Normans —

Nori quoque Francisco dicuntur nomine mauri.
Veloces agiles armigerique nimis
Ipse quidem populus late pernotus habetur
Intre dapes quærit, incolatque mare.
Pulcher adest facie vultuque statuque decorus—l iv

He goes on to tell us that they worshipped Neptune—Was it a similarity of name or of attributes that deceived him?

tations on the neighboring country As these Normans were unchecked by religious awe, the rich monasteries, which had stood harmless amidst the havoc of Christian war, were overwhelmed in the storm Perhaps they may have endured some irrecoverable losses of ancient learning, but their complaints are of monuments disfigured, bones of saints and kings dispersed, treasures carried away St Denis redeemed its abbot from captivity with six hundred and eighty-five pounds of gold All the chief abbeys were stripped about the same time, either by the enemy, or for contributions to the public necessity So impoverished was the kingdom, that in 860 Charles the Bald had great difficulty in collecting three thousand pounds of silver to subsidize a body of Normans against their countrymen The kings of France, too feeble to prevent or repel these invaders, had recourse to the palliative of buying peace at their hands, or rather precarious armistices, to which reviving thirst of plunder soon put an end At length Charles the Simple, in 918, ceded a great province, which they had already partly occupied, partly rendered desolate, and which has derived from them the name of Normandy Ignominious as this appears, it proved no impolitic step Rollo, the Norman chief, with all his subjects, became Christians and Frenchmen, and the kingdom was at once relieved from a terrible enemy, and strengthened by a race of hardy colonists [v]

The accession of Hugh Capet had not the immediate effect of restoring the royal authority over France [A D 987] His own very extensive fief was now, indeed united to the crown, but a few great vassals occupied the remainder of the kingdom Six of these obtained, at a subsequent time the exclusive appellation of peers of France,—the Count of Flanders, whose fief stretched from the Scheldt to the Somme the Count of Champagne, the Duke of Normandy, to whom Brittany did homage, the Duke of Burgundy on whom the Count of Nivernois seems to have depended the Duke of Aquitaine, whose territory, though less than the ancient kingdom of that name, comprehended Poitou Limousin, and most of Guienne with the feudal superiority over the Angoumois, and some other central districts, and lastly the Count of Toulouse, who possessed Lan-

[v] An exceedingly good sketch of these Norman incursions and of the political situation of France during that period may be found in two Memoirs by M Bonamy Mém de l Acad des Inscript tomes xv and xvii. These I have chiefly followed in the text. [Note XIII]

guedoc, with the small countries of Quercy and Rouergue, and the superiority over Auvergne [w] Besides these six, the Duke of Gascony, not long afterwards united with Aquitaine, the counts of Anjou, Ponthieu, and Vermandois, the Viscount of Bourges, the lords of Bourbon and Coucy, with one or two other vassals, held immediately of the last Carlovingian kings [x] This was the aristocracy, of which Hugh Capet usurped the direction, for the suffrage of no general assembly gave a sanction to his title On the death of Louis V he took advantage of the absence of Charles, Duke of Lorraine, who, as the deceased king's uncle, was nearest heir, and procured his own consecration at Rheims At first he was by no means acknowledged in the kingdom, but his contest with Charles proving successful, the chief vassals ultimately gave at least a tacit consent to the usurpation, and permitted the royal name to descend undisputed upon his posterity [y] But this was almost the sole attribute of sovereignty which the first kings of the third dynasty enjoyed For a long period before and after the accession of that family France has, properly speaking, no national history The character or fortune of those who were called its kings were little more important to the majority of the nation than those of foreign princes [Robert, A D 996, Henry I, 1031, Philip, 1060] Undoubtedly, the degree of influence which they exercised with respect to the vassals of the crown varied according to their power and their proximity Over Guienne and Toulouse the first four Capets had very little authority, nor do they seem to have ever received assistance from them either in civil or national wars [z] With prov-

[w] Auvergne changed its feudal superior twice It had been subject to the Duke of Aquitaine till about the middle of the tenth century The counts of Toulouse then got possession of it but early in the twelfth century the counts of Auvergne again did homage to Guienne It is very difficult to follow the history of these fiefs

[x] The immediacy of vassals in times so ancient is open to much controversy I have followed the authority of those industrious learned critics the editors of L'Art de vérifier les Dates

[y] The assent of France not only took no part in Hugh's elevation but long refused to pay him any obedience or rather to acknowledge his title for obedience was wholly out of the question The style of charters ran, instead of the king's name *Deo regnante rege expectante* or *absente rege Ludovico* He forced Guienne to submit about 990. But in Limousin they continued to acknowledge the sons of Charles of Lorraine till 1009—Vaissette Hist de Lang t i pp 120 150. Before this Toulouse had refused to recognize Eudes and Raoul two kings of France who were not of the Carlovingian family and even hesitated about Louis IV and Lothaire who had an hereditary right—*Idem*

These proofs of Hugh Capet's usurpation seem not to be materially invalidated by a dissertation in the 30th volume of the Academy of Inscriptions p 533. It is not of course to be denied that the northern parts of France acquiesced in his assumption of the royal title if they did not give an express consent to it

[z] I have not found any authority for supposing that the provinces south of the Loire contributed their assistance to the king in war unless the following

inces nearer to their own domains, such as Normandy and Flanders, they were frequently engaged in alliance or hostility; but each seemed rather to proceed from the policy of independent states than from the relation of a sovereign towards his subjects.[a]

It should be remembered that, when the fiefs of Paris and Orleans are said to have been reunited by Hugh Capet to the crown, little more is understood than the feudal superiority over the vassals of these provinces. As the kingdom of Charlemagne's posterity was split into a number of great fiefs, so each of these contained many barons, possessing exclusive immunities within their own territories, waging war at their pleasure, administering justice to their military tenants and other subjects, and free from all control beyond the conditions of the feudal compact.[b] At the accession of Louis VI. in 1108, the cities of Paris, Orleans, and Bourges, with the immediately adjacent districts, formed the most considerable portion of the royal domain A number of petty barons, with their fortified castles, intercepted the communication between these, and waged war against the king almost under the walls of his capital It cost Louis a great deal of trouble to reduce the lords of Montlhéry, and other places within a few miles of Paris Under this prince, however, who had more activity than his prede-

passage of Gulielmus Pictaviensis be considered as matter of fact, and not rather as a rhetorical flourish. He tells us that a vast army was collected by Henry I against the Duke of Normandy Burgundium, Arverniam atque Vasconiam properare videres horribiles ferro, immo vires tanti regni quantum in climata quatuor mundi patent cunctas—Recueil des Historiens, t xi p 83 But we have the roll of the army which Louis VI led against the Emperor Henry V, A.D 1120, in a national war· and it was entirely composed of troops from Champagne, the Isle of France, the Orleannois and other provinces north of the Loire—Velly, t iii p 62 Yet this was a sort of convocation of the ban, Rex ut eum tota Francia sequatur invitat Even so late as the reign of Philip Augustus, in a list of the knights bannerets of France, though those of Brittany Flanders, Champagne, and Burgundy, besides the royal domains are enumerated, no mention is made of the provinces beyond the Loire—Du Chesne, Script. Rerum Gallicarum, t v p 262.

[a] [Note XIV.]

[b] In a subsequent chapter I shall illustrate at much greater length the circumstances of the French monarchy with respect to its feudal vassals It would be inconvenient to anticipate the subject at present, which is rather of a legal than narrative character

Sismondi has given a relative scale of the great fiefs according to the number of modern departments which they contained At the accession of Louis VI the crown possessed about five departments, the Count of Flanders held four, the Count of Vermandois, two, the Count of Boulogne, one, the Count of Champagne, six the Duke of Burgundy three of Normandy five of Brittany, five the Count of Anjou three Thirty three departments south of the Loire he considers as hardly connected with the crown and twenty-one were at that time dependent on the empire (Vol v p 7) It is to be understood of course that these divisions are not rigorously exact, and also that, in every instance, owners of fiefs with civil and criminal jurisdiction had the full possession of their own territories, subject more or less to their immediate lord, whether it were the king or another The real domain of Louis VI was almost confined to the five towns—Paris, Orleans Estampes Melun and Compiegne (id p 86) and to estates, probably large, in their neighborhood.

cessors, the royal authority considerably revived From his reign we may date the systematic rivalry of the French and English monarchies Hostilities had several times occurred between Philip I and the two Williams, but the wars that began under Louis VI lasted, with no long interruption, for three centuries and a half, and form, indeed, the most leading feature of French history during the middle ages[c] Of all the royal vassals, the dukes of Normandy were the proudest and most powerful Though they had submitted to do homage, they could not forget that they came in originally by force, and that in real strength they were fully equal to their sovereign Nor had the conquest of England any tendency to diminish their pretensions[d]

Louis VII ascended the throne with better prospects than his father [A D 1137] He had married Eleanor, heiress of the great duchy of Guienne But this union, which promised an immense accession of strength to the crown, was rendered unhappy by the levities of that princess Repudiated by Louis, who felt rather as a husband than a king, Eleanor immediately married Henry II of England, who, already inheriting Normandy from his mother and Anjou from his father, became possessed of more than one half of France, and an overmatch for Louis, even if the great vassals of the crown had been always ready to maintain its supremacy One might venture, perhaps, to conjecture that the sceptre of France would eventually have passed from the Capets to the Plantagenets, if the vexatious quarrel with Becket at one time, and the successive rebellions fomented by Louis at a later period, had not embarrassed the great talents and ambitious spirit of Henry

But the scene quite changed when Philip Augustus son of Louis VII , came upon the stage [A D 1180] No prince comparable to him in systematic ambition and military enterprise had reigned in France since Charlemagne From his reign the French monarchy dates the recovery of its lustre He wrested from the Count of Flanders the Vermandois (that part of Picardy which borders on the Isle of France and Champagne), and subsequently, the county of Artois But the most

c Velly t ii p 40

d The Norman historians maintain that their dukes did not owe any service to the King of France but only simple homage or, as it was called per parag um —Recueil des Historiens t xi pref p 161 They certainly acted upon this principle and the manner in which they first came into the country is not very consistent with dependence

e The original counts of Vermandois were descended from Bernard King of Italy grandson of Charlemagne but their fief passed by the donation of Isa

important conquests of Philip were obtained against the kings of England [Conquest of Normandy, 1203] Even Richard I, with all his prowess, lost ground in struggling against an adversary not less active, and more politic, than himself But when John not only took possession of his brother's dominions, but confirmed his usurpation by the murder, as was very probably surmised, of the heir, Philip, artfully taking advantage of the general indignation, summoned him as his vassal to the court of his peers John demanded a safe conduct Willingly, said Philip, let him come unmolested And return? inquired the English envoy If the judgment of his peers permit him, replied the king By all the saints of France, he exclaimed, when further pressed, he shall not return unless acquitted The Bishop of Ely still remonstrated that the Duke of Normandy could not come without the King of England, nor would the barons of that country permit their sovereign to run the risk of death or imprisonment What of that, my lord bishop? cried Philip It is well known that my vassal the Duke of Normandy acquired England by force But if a subject obtains any accession of dignity, shall his paramount lord therefore lose his rights? [f]

It may be doubted whether, in thus citing John before his court, the King of France did not stretch his feudal sovereignty beyond its acknowledged limits Arthur was certainly no immediate vassal of the crown for Brittany, and, though he had done homage to Philip for Anjou and Maine, yet a subsequent treaty had abrogated his investiture, and confirmed his uncle in the possession of those provinces.[g] But the vigor of Philip, and the meanness of his adversary, cast a shade over all that might be novel or irregular in these proceedings John not appearing at his summons was declared guilty of felony, and his fiefs confiscated The execution of this sentence was not intrusted to a dilatory arm Philip poured his troops into Normandy and took town after town while the King of England infatuated by his own wickedness and cowardice made hardly an attempt at defence In two years Normandy, Maine, and Anjou were irrecoverably lost Poitou and Guienne resisted longer, but the conquest of the first was completed by

bel, the last countess, to her husband, the Earl of Flanders, after her death in 1233. The principal towns of the Vermandois are St Quentin and Peronne —Art de verifier les Dates t i p 701

f Matthew of Paris, p 258, ed 1684.

g The illegality of Philip's proceedings is well argued by Mably Observations sur l'Histoire de France L ii. c 6.

through one of those strange combinations of fortune, which thwart the natural course of human prosperity, and disappoint the plans of wise policy and beneficent government [k]

The rapid progress of royal power under Philip Augustus and his son had scarcely given the great vassals time to reflect upon the change which it produced in their situation The crown, with which some might singly have measured their forces was now an equipoise to their united weight And such an union was hard to be accomplished among men not always very sagacious in policy, and divided by separate interests and animosities They were not, however, insensible to the crisis of their feudal liberties, and the minority of Louis IX guided only by his mother the regent Blanche of Castile seemed to offer a favorable opportunity for recovering their former situation Some of the most considerable barons the counts of Brittany, Champagne and La Marche, had during the time of Louis VIII shown an unwillingness to push the Count of Toulouse too far, if they did not even keep up a secret understanding with him They now broke out into open rebellion but the address of Blanche detached some from the league, and her firmness subdued the rest For the first fifteen years of Louis s reign, the struggle was frequently renewed, till repeated humiliations convinced the refractory that the throne was no longer to be shaken A prince so feeble as Henry III was unable to afford them that aid from England which if his grandfather or son had then reigned, might probably have lengthened these civil wars

But Louis IX had methods of preserving his ascendency very different from military prowess That excellent prince was perhaps the most eminent pattern of unswerving probity and Christian strictness of conscience that ever held the sceptre

[k] The best account of this crusade against the Albigeois is to be found in the third volume of Vaissette s History of Languedoc the Benedictine spirit of mildness and veracity tolerably counterbalancing the prejudices of orthodoxy Velly Histoire de France ti has abridged this work

M Fauriel edited for the Collection des Documens Inédits in 837 a metrical history of the Albigensian crusade by a contemporary calling himself William of Tudela which seems to be an imaginary name. It contains 9578 verses. The author begins as a vehement enemy of the heretics and favorer of the crusade but becomes before his poem s half completed equally adverse to Montfort Folquet, and the other chefs of the persecution though never adopting heretical opinions

Sismond says—bitterly but not untruly—of Simon de Montfort — Habile guerrier austère dans ses mœurs fanatique dans sa religion inflexible cruel et perfide l réunissait to tes les qualités qui pouvaient parer a un monde (Vol v p 297) The Albigensian sectaries had insulted the clergy and hissed St Bernard which of course exasperated that irritable body and aggravated their revenge (Michelet, 306) But the atrocities of that war have hardly been equalled and Sismondi was not the man to conceal them

in any country There is a peculiar beauty in the reign of St Louis, because it shows the inestimable benefit which a virtuous king may confer on his people, without possessing any distinguished genius For nearly half a century that he governed France there is not the smallest want of moderation or disinterestedness in his actions, and yet he raised the influence of the monarchy to a much higher point than the most ambitious of his predecessors To the surprise of his own and later times, he restored great part of his conquests to Henry III, whom he might naturally hope to have expelled from France It would indeed have been a tedious work to conquer Guienne, which was full of strong places, and the subjugation of such a province might have alarmed the other vassals of his crown But it is the privilege only of virtuous minds to perceive that wisdom resides in moderate counsels no sagacity ever taught a selfish and ambitious sovereign to forego the sweetness of immediate power An ordinary king, in the circumstances of the French monarchy, would have fomented, or, at least, have rejoiced in, the dissensions which broke out among the principal vassals, Louis constantly employed himself to reconcile them In this, too his benevolence had all the effects of farsighted policy It had been the practice of his three last predecessors to interpose their mediation in behalf of the less powerful classes, the clergy, the inferior nobility, and the inhabitants of chartered towns Thus the supremacy of the crown became a familiar idea, but the perfect integrity of St Louis wore away all distrust, and accustomed even the most jealous feudatories to look upon him as their judge and legislator And as the royal authority was hitherto shown only in its most amiable prerogatives, the dispensation of favor and the redress of wrong, few were watchful enough to remark the transition of the French constitution from a feudal league to an absolute monarchy

It was perhaps fortunate for the display of St Louis's virtues that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII A century earlier his mild and scrupulous character unsustained by great actual power might not have inspired sufficient awe But the crown was now grown so formidable, and Louis was so eminent for his firmness and bravery qualities without which every other virtue would have been ineffectual that no

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It was perhaps fortunate for the display of St Louis's virtues that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII A century earlier his mild and scrupulous character, unsustained by great actual power might not have inspired sufficient awe. But the crown was now grown so formidable, and Louis was so eminent for his firmness and bravery qualities without which every other virtue would have been ineffectual, that no

barians treated the visitors of Jerusalem with still greater contumely, mingling with their Mohammedan bigotry, a consciousness of strength and courage, and a scorn of the Christians, whom they knew only by the debased natives of Greece and Syria, or by these humble and defenceless palmers When such insults became known throughout Europe, they excited a keen sensation of resentment among nations equally courageous and devout, which though wanting as yet any definite means of satisfying itself, was ripe for whatever favorable conjuncture might arise

Twenty years before the first crusade Gregory VII had projected the scheme of embodying Europe in arms against Asia—a scheme worthy of his daring mind, and which, perhaps, was never forgotten by Urban II, who in everything loved to imitate his great predecessor *o* This design of Gregory was founded upon the supplication of the Greek emperor Michael, which was renewed by Alexius Comnenus to Urban with increased importunity The Turks had now taken Nice, and threatened, from the opposite shore, the very walls of Constantinople Everyone knows whose hand held the torch to that inflammable mass of enthusiasm that pervaded Europe, the hermit of Picardy, who, roused by witnessed wrongs and imagined visions, journeyed from land to land, the apostle of an holy war The preaching of Peter was powerfully seconded by Urban In the councils of Piacenza and of Clermont the deliverance of Jerusalem was eloquently recommended and exultingly undertaken "It is the will of God!" was the tumultuous cry that broke from the heart and lips of the assembly at Clermont, and these words afford at once the most obvious and most certain explanation of the leading principle of the crusades Later writers incapable of sympathizing with the blind fervor of zeal, or anxious to find a pretext for its effect somewhat more congenial to the spirit of our times, have sought political reasons for that which resulted only from predominant affections *No suggestion of these will, I believe,* be found in contemporary historians To rescue the Greek empire from its imminent peril, and thus to secure Christendom from enemies who professed towards it eternal hostil-

o Gregory addressed in 1074 a sort of encyclical letter to all who would defend the Christian faith enforcing upon them the duty of taking up arms against the Saracens who had almost come up to the walls of Constantinople No mention of Palestine is made in this letter Labbé Concilia t x p 44 St Marc Abrégé Chron. de l'Hist. de l'Italie t. iii p 614.

of the church, so that he could not be impleaded in any civil court, except on criminal charges, or disputes relating to land.[q]

None of the sovereigns of Europe took a part in the first crusade; but many of their chief vassals, great part of the inferior nobility, and a countless multitude of the common people. The priests left their parishes, and the monks their cells; and though the peasantry were then in general bound to the soil, we find no check given to their emigration for this cause. Numbers of women and children swelled the crowd; it appeared a sort of sacrilege to repel anyone from a work which was considered as the manifest design of Providence. But if it were lawful to interpret the will of Providence by events, few undertakings have been more branded by its disapprobation than the crusades. So many crimes and so much misery have seldom been accumulated in so short a space as in the three years of the first expedition. We should be warranted by contemporary writers in stating the loss of the Christians alone during this period at nearly a million; but at the least computation it must have exceeded half that number.[r] To engage in the crusade, and to perish in it, were almost synonymous. Few of those myriads who were mustered in the plains of Nice returned to gladden their friends in Europe with the story of their triumph at Jerusalem. Besieging alternately and besieged in Antioch, they drained to the lees the cup of misery: three hundred thousand sat down before that place; next year there remained but a sixth part to pursue the enterprise. But their losses were least in the field of battle; the intrinsic superiority of European prowess was constantly displayed, the angel of Asia, to apply the bold language of our poet, high and unmatchable, where her rival was not, became a fear; and the Christian lances bore all before them in their shock from Nice to Antioch, Edessa, and Jerusalem [A D 1099] It was here, where their triumph was consummated, that it was stained with the most *atrocious massacre, not limited to the hour of resistance*, but renewed deliberately even after that famous penitential pro-

q Otho of Frisengen c 35 has inserted a bull of Eugenius III in 1146 containing some of these privileges Others are granted by Philip Augustus in 1214 Ordonnances des Rois de France, tom 1 See also Du Cange, voc Crucis Privilegia

r William of Tyre says that at the review before Nice there were found 600 000 of both sexes exclusive of 100 000 cavalry armed in mail L ii c 23 But Fulk of Chartres reckons the same number, besides women, children, and priests An immense slaughter had previously been made in Hungary of the rabble under Gaultier Sans Avoir

cession to the holy sepulchre, which might have calmed their ferocious dispositions, if, through the misguided enthusiasm of the enterprise, it had not been rather calculated to excite them.[s]

The conquests obtained at such a price by the first crusade were chiefly comprised in the maritime parts of Syria. Except the state of Edessa beyond the Euphrates,[t] which, in its best days, extended over great part of Mesopotamia, the Latin possessions never reached more than a few leagues from the sea. Within the barrier of Mount Libanus their arms might be feared, but their power was never established, and the prophet was still invoked in the mosques of Aleppo and Damascus. The principality of Antioch to the north, the kingdom of Jerusalem with its feudal dependencies of Tripoli and Tiberias to the south, were assigned, the one to Boemond, a brother of Robert Guiscard, Count of Apulia, the other to Godfrey of Boulogne,[u] whose extraordinary merit had justly raised him to a degree of influence with the chief crusaders that has been sometimes confounded with a legitimate authority.[v] In the course of a few years Tyre, Ascalon, and the other cities upon the sea coast, were subjected by the successors of Godfrey on the throne of Jerusalem. But as their enemies had been stunned, not killed, by the western storm, the Latins were constantly molested by the Mohammedans of Egypt and Syria. They were exposed as the outposts of Christendom with no respite and few resources. A second crusade, in which the Emperor Conrad III. and Louis VII. of France were engaged, each with seventy thousand cavalry, made scarce any diver

[s] The work of Maltly, entitled L'Esprit des Croisades, is deserving of considerable praise for its diligence and impartiality. It carries the history however no farther than the first expedition. Gibbon's two chapters on the crusades, though not without inaccuracies, are a brilliant portion of his great work. The original writers are chiefly collected in two folio volumes, entitled Gesta Dei per Francos. Hanover, 1611.

[t] Edessa was a little Christian principality, surrounded by, and tributary to the Turks. The inhabitants invited Baldwin, on his progress in the first crusade, and he made no great scruple of supplanting the reigning prince, who indeed is represented as a tyrant and usurper. Esprit des Croisades, t. iv. p. 62. De Guignes, Hist. des Huns, tom. ii. pp. 135, 162.

[u] Godfrey never took the title of King of Jerusalem, not choosing, he said, to wear a crown of gold in that city where his Saviour had been crowned with thorns. Baldwin, Godfrey's brother, who succeeded him within two years, entitles himself Rex Hierusalem Latinorum primus. Will. Tyr. l. i. c. 12.

[v] The heroes of the crusade are just like those of romance. Godfrey is not only the wisest but the strongest man in the army. Perhaps Tasso has lost some parts of this physical superiority for the sake of contrasting him with the imaginary Rinaldo. He cleaves a Turk in twain from the shoulder to the haunch. A noble Arab, after the taking of Jerusalem, requests him to try his sword upon a camel, when Godfrey with ease cuts off the head. The Arab suspecting there might be something peculiar in the blade, desires him to do the same with his sword, and the hero obliges him by demolishing a second camel. Will. Tyr. l. ix. c. 22.

sion [A D 1147], and that vast army wasted away in the passage of Natolia [w]

The decline of the Christian establishments in the East is ascribed by William of Tyre to the extreme viciousness of their manners, to the adoption of European arms by the Orientals, and to the union of the Mohammedan principalities under a single chief [x] Without denying the operation of these causes, and especially the last, it is easy to perceive one more radical than all the three the inadequacy of their means of self-defence. The kingdom of Jerusalem was guarded only, exclusive of European volunteers, by the feudal service of eight hundred and sixty-six knights, attended each by four archers on horseback, by a militia of five thousand and seventy-five burghers, and by a conscription, in great exigencies, of the remaining population [y] William of Tyre mentions an army of one thousand three hundred horse and fifteen thousand foot, as the greatest which had ever been collected, and predicts the utmost success from it if wisely conducted [z] This was a little before the irruption of Saladin In the last fatal battle Lusignan seems to have had somewhat a larger force [a] Nothing can more strikingly evince the ascendency of Europe than the resistance of these Frankish acquisitions in Syria during nearly two hundred years Several of their victories over the Moslems were obtained against such disparity of numbers, that they may be compared with whatever is most illustrious in history or romance [b] These perhaps were less due to the descendants of

[w] Vertot puts the destruction in the second crusade at two hundred thousand men (Hist de Malthe p 129) and from William of Tyre's language there seems no reason to consider this an exaggeration. L xvi c 19

[x] L xxii c 7 John of Vitry also mentions the change of weapons by the Saracens in imitation of the Latins using the lances and coat of mail instead of bows and arrows c 92 But according to a more ancient writer part of Soliman's (the Icidge Arslan of De Guignes) army in the first crusade was in armor loricis et galeis et clypeis aureis valde armati Albertus Aquens s l in c 27 I may add to this a testimony of another kind not less decisive. In the Abbey of St Denis there were ten pictures instained glass representing sieges and battles in the first crusade These were made by order of Suger the minister of Louis VI and consequently in the early part of the twelfth century In many of them the Turks are painted in coats of mail, sometimes even in a plated cuirass In others they are quite unarmed and in flowing robes Montfaucon Monumens de la Monarchie Française t 1 pl 50

[y] Gibbon c 29 note 125 Jerusalem itself was very thinly inhabited For all the heathens says William of Tyre had perished in the massacre when the city was taken or if any escaped they were not allowed to return no heathen being thought fit to dwell in the holy city Baldwin invited some Arabian Christians to settle in it

[z] L xxii c 27

[a] A primo introitu Latinorum in terram sanctam says John de Vitry nostri tot milites in uno prœlio congregare nequiverunt Erant enim mille ducenti milites loricati peditum autem cum armis arcubus et balistis circiter viginti millia, infaustæ expeditioni interfuisse dicuntur Gesta Dei per Francos p 1118.

[b] A brief summary of these victories is given by John of Vitry c. 93.

the first crusaders, settled in the Holy Land,[c] than to those volunteers from Europe whom martial ardor and religious zeal impelled to the service. It was the penance commonly imposed upon men of rank for the most heinous crimes, to serve a number of years under the banner of the cross. Thus a perpetual supply of warriors was poured in from Europe; and in this sense the crusades may be said to have lasted without intermission during the whole period of the Latin settlements. Of these defenders the most renowned were the military orders of the Knights of the Temple and of the Hospital of St. John;[d] instituted, the one in 1124, the other in 1118, for the sole purpose of protecting the Holy Land The Teutonic order, established in 1190, when the kingdom of Jerusalem was falling, soon diverted its schemes of holy warfare to a very different quarter of the world. Large estates, as well in Palestine as throughout Europe, enriched the two former institutions; but the pride, rapaciousness, and misconduct of both, especially of the Templars, seem to have balanced the advantages derived from their valor.[e] At length the famous Saladin, usurping the throne of a feeble dynasty which had reigned in Egypt, broke in upon the Christians of Jerusalem; the king and the kingdom fell into his hands [A D. 1187]; nothing remained but a few strong towns upon the sea-coast.

These misfortunes roused once more the princes of Europe, and the third crusade was undertaken by three of her sovereigns, the greatest in personal estimation as well as dignity—by the Emperor Frederic Barbarossa, Philip Augustus of France, and our own Richard Cœur de Lion. [A D. 1189] But this, like the preceding enterprise, failed of permanent effect: and those feats of romantic prowess which made the name of Richard so famous both in Europe and Asia[f] proved only the total inefficacy of all exertions in an at-

tempt so impracticable, Palestine was never the scene of another crusade One great armament was diverted to the siege of Constantinople [A D 1204], and another wasted in fruitless attempts upon Egypt [A D 1218] The Emperor Frederic II afterwards procured the restoration of Jerusalem by the Saracens, but the Christian princes of Syria were unable to defend it, and their possessions were gradually reduced to the maritime towns Acre, the last of these, was finally taken by storm in 1291, and its ruin closes the history of the Latin dominion in Syria, which Europe had already ceased to protect

The two last crusades were undertaken by St Louis [A D 1248] In the first he was attended by 2,800 knights and 50,000 ordinary troops g He landed at Damietta in Egypt, for that country was now deemed the key of the Holy Land, and easily made himself master of the city But advancing up the country, he found natural impediments as well as enemies in his way, the Turks assailed him with Greek fire, an instrument of warfare almost as surprising and terrible as gunpowder, he lost his brother the Count of Artois, with many knights, at Massoura, near Cairo, and began too late a retreat towards Damietta Such calamities now fell upon this devoted army as have scarce ever been surpassed, hunger and want of every kind, aggravated by an unsparing pestilence At length the king was made prisoner, and very few of the army escaped the Turkish cimeter in battle or in captivity Four hundred thousand livres were paid as a ransom for Louis He returned to France, and passed nearly twenty years in the exercise of those virtues which are his best title to canonization But the fatal illusions of superstition were still always at his heart, nor did it fail to be painfully observed by his subjects that he still kept the cross upon his garment His last expedition was originally designed for Jerusalem But he had received some intimation that the King of Tunis was desirous of embracing Christianity That these intentions might be carried into effect, he sailed out of his way to the coast of Africa, and laid siege to that city A fever here put an end to his life, sacrificed to that ruling passion which never would have forsaken him But he had survived the spirit of the cru-

g The Arabian writers give him 9500 knights and 130 000 common soldiers But I greatly prefer the authority of Joinville who has twice mentioned the number of knights in the text. On Gibbon's authority, I put the main body at 50 000 but if Joinville has stated this I have missed the passage. Their vassals amounted to 1800.

sades; the disastrous expedition to Egypt had cured his subjects, though not himself, of their folly;[h] his son, after making terms with Tunis, returned to France; the Christians were suffered to lose what they still retained in the Holy Land; and though many princes in subsequent ages talked loudly of renewing the war, the promise, if it were ever sincere, was never accomplished.

Louis IX. had increased the royal domain by the annexation of several counties and other less important fiefs; but soon after the accession of Philip III. [A.D. 1270] (surnamed the Bold) it received a far more considerable augmentation. Alphonso, the late king's brother, had been invested with the county of Poitou, ceded by Henry III., together with part of Auvergne and of Saintonge; and held also, as has been said before, the remains of the great fief of Toulouse, in right of his wife Jane, heiress of Raymond VII. Upon his death, and that of his countess, which happened about the same time, the king entered into possession of all these territories. [A.D. 1271.] This acquisition brought the sovereigns of France into contact with new neighbors, the kings of Aragon and the powers of Italy. The first great and lasting foreign war which they carried on was that of Philip III. and Philip IV. against the former kingdom, excited by the insurrection of Sicily. [A.D. 1270.] Though effecting no change in the boundaries of their dominions, this war may be deemed a sort of epoch in the history of France and Spain, as well as in that of Italy, to which it more peculiarly belongs

There still remained five great and ancient fiefs of the French crown; Champagne, Guienne, Flanders, Burgundy, and Brittany. But Philip IV. [A.D. 1285], usually called the Fair, married the heiress of the first, a little before his father's death;

[h] The refusal of Joinville to accompany the king in this second crusade is very memorable, and gives us an insight into the bad effects of both expeditions. Le Roy de France et le Roy de Navarre me pressoient fort de me croiser, et entreprendre le chemin du pelerinage de la croix. Mais je leur respondi, que tendis que j'avois esté oultre-mer au service de Dieu, que les gens et officers du Roy de France avoient trop grevé et foullé mes subjets, tant qu'ils en estoient apovris tellement que jamès il ne seroit que eulx et moy ne nous en sortissons. Et veoie clerement, si je me mectoie au pelerinage de la croix, que ce seroit la totale destruction de mesdis povres subjets. Depuis ouy je dire a plusieurs, que ceux qui luy conseillerent l'enterprinse de la croix firent un trez grant mal, et pecherent mortellement. Car tandis qu'il fust au royaume de France tout son royaume vivoit en paix et regnoit justice. Et incontinent qu'il en fust ors, tout commença à décliner et à empirer.—T. ii. p. 158.

In the Fabliaux of Le Grand d'Aussy we have a neat poem by Rutubœuf a writer of St. Louis's age, in a dialogue between a crusader and a non-crusader, wherein though he gives the last word to the former, it is plain that he designed the opposite scale to preponderate.—T. ii. p. 163.

ance among the English nobility, which his arbitrary measures had provoked, broke out very opportunely for Philip, to thwart every effort for the recovery of Guienne by arms [A D 1303] But after repeated suspensions of hostilities a treaty was finally concluded, by which Philip restored the province, on the agreement of a marriage between his daughter Isabel and the heir of England

To this restitution he was chiefly induced by the ill success that attended his arms in Flanders, another of the great fiefs which this ambitious monarch had endeavored to confiscate We have not, perhaps, as clear evidence of the original injustice of his proceedings towards the Count of Flanders as in the case of Guienne, but he certainly twice detained his person, once after drawing him on some pretext to his court, and again, in violation of the faith pledged by his generals The Flemings made, however, so vigorous a resistance, that Philip was unable to reduce that small country, and in one famous battle at Courtray they discomfited a powerful army with that utter loss and ignominy to which the undisciplined impetuosity of the French nobles was pre eminently exposed *k* [A D 1302]

Two other acquisitions of Philip the Fair deserve notice, that of the counties of Angouleme and La Marche, upon a sentence of forfeiture (and, as it seems, a very harsh one) passed against the reigning count, and that of the city of Lyons, and its adjacent territory, which had not even feudally been subject to the crown of France for more than three hundred years Lyons was the dowry of Matilda daughter of Louis IV, on her marriage with Conrad King of Burgundy, and was bequeathed with the rest of that kingdom by Rodolph, in 1032, to the empire Frederic Barbarossa conferred upon the Archbishop of Lyons all regalian rights over the city, with the title of Imperial Vicar France seems to have had no concern with it, till St Louis was called in as a mediator in disputes between the chapter and the city, during a vacancy of the see, and took the exercise of jurisdiction upon himself for the time Philip III having been chosen arbitrator in similar circumstances insisted, before he would restore the jurisdiction, upon an oath of fealty from the new archbishop This oath which could be demanded it seems by no right but that

k The Flemings took at Courtray 4000 pair of gilt spurs which were only worn by knights These Velly happily enough compares to Hannibal's three bushels of gold rings at Cannæ

from the time of Clovis, no woman had ever reigned in France, and although not an instance of a sole heiress had occurred before yet some of the Merovingian kings left daughters, who might, if not rendered incapable by their sex, have shared with their brothers in partitions then commonly made[s] But, on the other hand, these times were gone quite out of memory, and France had much in the analogy of her existing usages to reconcile her to a female reign The crown resembled a great fief, and the great fiefs might universally descend to women Even at the consecration of Philip himself, Maud, Countess of Artois, held the crown over his head among the other peers[t] And it was scarcely beyond the recollection of persons living that Blanche had been legitimate regent of France during the minority of St Louis

For these reasons, and much more from the provisional treaty concluded between Philip and the Duke of Burgundy, it may be fairly inferred that the Salic law, as it was called, was not so fixed a principle at that time as has been contended But however this may be it received at the accession of Philip the Long a sanction which subsequent events more thoroughly confirmed Philip himself leaving only three daughters his brother Charles mounted the throne [Charles IV, A D 1322], and upon his death the rule was so unquestionably established that his only daughter was excluded by the Count of Valois grandson of Philip the Bold This prince first took the regency, the queen dowager being pregnant and, upon her giving birth to a daughter was crowned king [A D 1328] No competitor or opponent appeared in France but one more formidable than any whom France could have produced was awaiting the occasion to prosecute his imagined right with all the resources of valor and genius and to carry desolation over

[s] The treaty of Andely in 587 will be found to afford a very strong presumption that females were at that time excluded from reigning in France. Greg Turon. l. ix

[t] The continuator of Nangis says indeed of this de quo alquandiu fuerunt But these were probably the partisans of her nephew Robert, who had been excluded by a judicial sentence of Philip IV on the ground that the right of representation did not take place in Artois a decision considered by many as unjust Robert subsequently renewed his appeal to the court of Philip of Valois but unhappily for himself yielded to the temptation of forging documents in support of a claim which seems to have been at least plausible without such aid This unwise dishonesty which is not without parallel in more private causes not only ruined his pretensions to the county of Artois but produced a sentence of forfeiture and even of capital punishment against himself See a pretty good account of Robert's process in Velly t. v p 262

Sismondi (x 44) does not seem to be convinced that Robert of Artois was guilty of forgery, but perhaps he is led away by his animosity against kings especially those of the house of Valois. M Michelet informs us (v 30) that the deeds produced by the demoiselle Divion on which Robert founded his claims are in the Trésor des Chartes and palpable forgeries.

that great kingdom with as little scruple as if he was preferring a suit before a civil tribunal

From the moment of Charles IV's death, Edward III of England buoyed himself up with a notion of his title to the crown of France, in right of his mother Isabel, sister to the three last kings We can have no hesitation in condemning the injustice of this pretension Whether the Salic law were or were not valid, no advantage could be gained by Edward Even if he could forget the express or tacit decision of all France, there stood in his way Jane, the daughter of Louis X, three of Philip the Long, and one of Charles the Fair Aware of this, Edward set up a distinction, that, although females were excluded from succession, the same rule did not apply to their male issue, and thus, though his mother Isabel could not herself become Queen of France, she might transmit a title to him But this was contrary to the commonest rules of inheritance, and if it could have been regarded at all Jane had a son, afterwards the famous King of Navarre, who stood one degree nearer to the crown than Edward

It is asserted in some French authorities that Edward preferred a claim to the regency immediately after the decease of Charles the Fair, and that the States General or at least the peers of France adjudged that dignity to Philip de Valois Whether this be true or not, it is clear that he entertained projects of recovering his right as early, though his youth and the embarrassed circumstances of his government threw insuperable obstacles in the way of their execution [u] He did liege homage, therefore to Philip for Guienne and for several years, while the affairs of Scotland engrossed his attention, gave no sign of meditating a more magnificent enterprise As he advanced in manhood, and felt the consciousness of his strength, his early designs grew mature and produced a series of the most important and interesting revolutions in the fortunes of France These will form the subject of the ensuing pages

[u] Letter of Edward III addressed to certain nobles and towns in the south of France dated March 28 1328, four days before the birth of Charles IV's posthumous daughter intimates this resolution Rymer vol iv p 341 et seq But an instrument dated at Northampton on the 16th of May, is decisive This is a procuration to the bishops of Worcester and Litchfield to demand and take possession of the kingdom of France in our name which kingdom has devolved and appertains to us as to the right heir P 344 To this misson Archbishop Stratford refers in his vindication of himself from Edward's accusation of treason in 1340 and informs us that the two bishops actually proceeded to France though without mentioning any further particulars *Novit enim quilibet ignorat quod cum quæstio de regno Franciæ post mortem regis Caroli fratris serenissimæ matris vestræ in parlamento tunc apud*

war was like a great tournament, where the combatants fought indeed *à outrance*, but with all the courtesy and fair play of such an entertainment, and almost as much for the honor of their ladies. In the school of the Edwards were formed men not inferior in any nobleness of disposition to their masters—Manni and the Captal de Buch, Knollys and Calverley, Chandos and Lancaster. On the French side, especially after Du Guesclin came on the stage, these had rivals almost equally deserving of renown. If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history.

Philip of Valois, and John his son, showed but poorly in comparison with their illustrious enemies Yet they both had considerable virtues; they were brave,[b] just, liberal, and the latter, in particular, of unshaken fidelity to his word. But neither was beloved by his subjects; the misgovernment and extortion of their predecessors during half a century had alienated the public mind, and rendered their own taxes and debasement of the coin intolerable. Philip was made by misfortune, John by nature, suspicious and austere; and although their most violent acts seem never to have wanted absolute justice, yet they were so ill-conducted, and of so arbitrary a complexion, that they greatly impaired the reputation, as well as interests, of these monarchs In the execution of Clisson under Philip, in that of the Connétable d'Eu under John, and still more in that of Harcourt, even in the imprisonment of the King of Navarre, though every one of these might have been guilty of treasons, there were circumstances enough to exasperate the disaffected, and to strengthen the party of so politic a competitor as Edward

Next to the personal qualities of the King of England, his resources in this war must be taken into the account. It was after long hesitation that he assumed the title and arms of France, from which, unless upon the best terms, he could not

[b] The bravery of Philip is not questioned But a French historian in order, I suppose, to enhance this quality, has presumed to violate truth in an extraordinary manner The challenge sent by Edward, offering to decide his claim to the kingdom by single combat is well known Certainly it conveys no imputation on the King of France to have declined this unfair proposal But Velly has represented him as accepting it on condition that Edward would stake the crown of England against that of France, an interpolation which may be truly called audacious since not a word of this is in Philip's letter, preserved in Rymer, which the historian had before his eyes, and actually quotes upon the occasion Hist de France, t viii p 382.

recede without loss of honor.[c] In the meantime he strengthened himself by alliances with the emperor, with the cities of Flanders, and with most of the princes in the Netherlands and on the Rhine. Yet I do not know that he profited much by these conventions, since he met with no success till the scene of the war was changed from the Flemish frontier to Normandy and Poitou. The troops of Hainault alone were constantly distinguished in his service.[d]

But his intrinsic strength was at home. England had been growing in riches since the wise government of his grandfather, Edward I., and through the market opened for her wool with the manufacturing towns of Flanders. She was tranquil within; and her northern enemy, the Scotch, had been defeated and quelled. The parliament, after some slight precautions against a very probable effect of Edward's conquest of France, the reduction of their own island into a province, entered, as warmly as improvidently, into his quarrel. The people made it their own, and grew so intoxicated with the victories of this war, that for some centuries the injustice and folly of the enterprise do not seem to have struck the gravest of our countrymen.

There is, indeed, ample room for national exultation at the names of Crecy, Poitiers, and Azincourt So great was the disparity of numbers upon those famous days, that we cannot, with the French historians, attribute the discomfiture of their hosts merely to mistaken tactics and too impetuous valor They yielded rather to that intrepid steadiness in danger which had already become the characteristic of our English soldiers, and which during five centuries, has insured their superiority, whenever ignorance or infatuation has not led them into the field But these victories and the qualities that secured them, must chiefly be ascribed to the freedom of our constitution, and to the superior condition of the people Not the nobility of England not the feudal tenants won the battles of Crecy and Poitiers for these were fully matched in the ranks of France, but the yeomen who drew the bow with strong and steady arms, accustomed to use it in their native fields, and rendered fearless by personal competence and civil freedom It is well known that each of the three great victories was due to our archers who were chiefly of the middle class and attached according to the system of that age, to the knights and squires who fought in heavy armor with the lance Even at the battle of Poitiers of which our country seems to have the least right to boast since the greater part of the Black Prince s small army was composed of Gascons the merit of the English bowmen is strongly attested by Froissart *e*

Yet the glorious termination to which Edward was enabled at least for a time to bring the contest was rather the work of fortune than of valor and prudence Until the battle of Poitiers he had made no progress towards the conquest of France That country was too vast and his army too small for such a revolution The victory of Crecy gave him nothing but Calais a post of considerable importance in war and peace

e Au vray d re les archres d Angleterre fa so ent à leurs gens grant avantage Car s t royent tant espessement, que les Franço s ne sçavoyent dequel coste entendre qu ls ne fussent consuyv s de trayt et s avançoyent tous jours ces Anglo s et pet t à pet t enqueroyent terre. Part I c 62

It s by an odd overs ght that S s mond has sa d (x 295) Les Angla s éta ent accoutumés à se serv r sans cesse de *l arba è e* The cross-bow was looked upon as a weapon unworthy of a brave man a pre ud ce wh ch af er wards preva led w th respect to fire-arms A romancer praises the Emperor Conrad

Par un effort de lance et d écu
Conquérant tous ses ennem s
Y a arbalestre s n fu m s

quoted by Boucher n h s translat on of Il Consolato del Mare p 518 Even the long bow m ght ncur th s censure or any weapon n wh ch the combat ants fought *em nus* B t f we look at the plate armor of the fifteenth century t may seem that a kn ght had not much to boast of the danger to wh ch he ex posed h mse f espec ally when encoun ter ng nfantry

but rather adapted to annoy than to subjugate the kingdom But at Poitiers he obtained the greatest of prizes, by taking prisoner the King of France Not only the love of freedom tempted that prince to ransom himself by the utmost sacrifices, but his captivity left France defenceless, and seemed to annihilate the monarchy itself The government was already odious, a spirit was awakened in the people which might seem hardly to belong to the fourteenth century, and the convulsions of our own time are sometimes strongly paralleled by those which succeeded the battle of Poitiers Already the States General had established a fundamental principle, that no resolution could be passed as the opinion of the whole unless each of the three orders concurred in its adoption[f] The right of levying and regulating the collection of taxes was recognized But that assembly, which met at Paris immediately after the battle, went far greater lengths in the reform and control of government From the time of Philip the Fair the abuses natural to arbitrary power had harassed the people There now seemed an opportunity of redress, and however seditious, or even treasonable, may have been the motives of those who guided this assembly of the States, especially the famous Marcel, it is clear that many of their reformations tended to liberty and the public good[g] But the tumultuous scenes which passed in the capital, sometimes heightened into civil war, necessarily distracted men from the common defence against Edward These tumults were excited, and the distraction increased, by Charles King of Navarre, surnamed the Bad to whom the French writers have not perhaps unjustly, attributed a character of unmixed and inveterate malignity He was grandson of Louis Hutin by his daughter Jane, and, if Edward's pretence of claiming through females could be admitted, was a nearer heir to the crown, the consciousness of which seems to have suggested itself to his depraved mind as an excuse for his treacheries, though he could entertain very little prospect of asserting the claim against either contending party John had bestowed his daughter in marriage on the King of Navarre, but he very soon gave a proof of his character by procuring the

[f] Ordonnances des Rois de France t 1

[g] I must refer the reader onward to the next chapter for more information on this subject This separation is inconvenient but it arose indispensably out of my arrangement and prevented greater inconveniences

assassination of the king's favorite, Charles de la Cerda An irreconcilable enmity was the natural result of this crime. Charles became aware that he had offended beyond the possibility of forgiveness, and that no letters of pardon, nor pretended reconciliation, could secure him from the king's resentment Thus, impelled by guilt into deeper guilt, he entered into alliances with Edward, and fomented the seditious spirit of Paris Eloquent and insinuating, he was the favorite of the people, whose grievances he affected to pity, and with whose leaders he intrigued As his paternal inheritance, he possessed the country of Evreux in Normandy The proximity of this to Paris created a formidable diversion in favor of Edward III , and connected the English garrisons of the North with those of Poitou and Guienne

There is no affliction which did not fall upon France during this miserable period A foreign enemy was in the heart of the kingdom, the king a prisoner, the capital in sedition, a treacherous prince of the blood in arms against the sovereign authority Famine, the sure and terrible companion of war, for several years desolated the country In 1348 a pestilence, the most extensive and unsparing of which we have any memorial, visited France as well as the rest of Europe, and consummated the work of hunger and the sword [h] The companies of adventure, mercenary troops in the service of John or Edward, finding no immediate occupation after the truce of 1357, scattered themselves over the country in search of pillage No force existed sufficiently powerful to check these robbers in their career Undismayed by superstition, they compelled the pope to redeem himself in Avignon by the

[h] A full account of the ravages made by this memorable plague may be found in Matteo Villani the second of that family who wrote the history of Florence His brother and predecessor John Villani was himself a victim to it The disease began in the Levant about 1346 from whence Italian traders brought it to Sicily Pisa and Genoa In 1348 it passed the Alps and spread over France and Spain in the next year it reached Britain and in 1350 laid waste Germany and other northern states lasting generally about five months in each country At Florence more than three out of five died Muratori Script Rerum Italicarum t xiv p 12 The stories of Boccaccio's Decamerone as is well known are supposed to be related by a society of Florentine ladies and gentlemen retired to the country during this pestilence

Another pestilence only less destructive than the former wasted both France and England in 1361 Sismondi bitterly remarks (x 342) that between four and five millions who died of the former plague in France merely diminished the number of the oppressed producing no perceptible effect. But this is exaggerated The plague caused a truce of several months. The war was in fact carried on with less vigor for some years It is however by no means unlikely that the number of deaths has been overrated. Nothing can be more loose than the statistical evidence of mediæval writers Thus 30 000 are said to have died at Narbonne (Michelet v 94.) But had Narbonne so many to lose? At least would not the depopulation have been out of all proportion to other cities?

payment of forty thousand crowns.[1] France was the passive victim of their license, even after the pacification concluded with England, till some were diverted into Italy, and others led by Du Guesclin to the war of Castile. Impatient of this wretchedness, and stung by the insolence and luxury of their lords, the peasantry of several districts broke out into a dreadful insurrection. [A D 1358] This was called the Jacquerie, from the cant phrase Jacques Bonhomme, applied to men of that class; and was marked by all the circumstances of horror incident to the rising of an exasperated and unenlightened populace.[j]

Subdued by these misfortunes, though Edward had made but slight progress towards the conquest of the country, the regent of France, afterwards Charles V, submitted to the peace of Bretigni [A D 1360] By this treaty, not to mention less important articles, all Guienne, Gascony, Poitou, Saintonge, the Limousin, and the Angoumois, as well as Calais, and the county of Ponthieu, were ceded in full sovereignty to Edward; a price abundantly compensating his renunciation of the title of France, which was the sole concession stipulated in return. Every care seems to have been taken to make the cession of

[1] Froissart, p 187 This troop of banditti was commanded by Arnaud de Cervole, surnamed l'Archipretre, from a benefice which, although a layman, he possessed, according to the irregularity of those ages. See a memoir on the life of Arnaud de Cervole, in the twenty fifth volume of the Academy of Inscriptions

[j] The second continuator of Nangis, a monk of no great abilities, but entitled to notice as our most contemporary historian, charges the nobility with spending the money raised upon the people by oppressive taxes, in playing at dice, "et alios indecentes jocos" D Achery, Spicilegium, t III p 114 (folio edition) All the miseries that followed the battle of Poitiers he ascribes to bad government and neglect of the commonweal but especially to the pride and luxury of the nobles. I am aware that this writer is biassed in favor of the King of Navarre, but he was an eye-witness of the people's misery, and perhaps a less exceptionable authority than Froissart whose love of pageantry and habits of feasting in the castles of the great seem to have produced some insensibility towards the sufferings of the lower classes It is a painful circumstance, which Froissart and the continuator of Nangis attest, that the citizens of Calais more interesting than the common heroes of history, were unrewarded and begged their bread in misery throughout France Villaret contradicts this, on the authority of an ordinance which he has seen in their favor But that was not a time when ordinances were very sure of execution Vill t IX p 470. I must add that the celebrated story of the six citizens of Calais, which has of late been called in question, receives strong confirmation from John Villani, who died very soon afterwards L XII c 96. Froissart of course wrought up the circumstances after this manner In all the coloring of his history he is as great a master as Livy, and as little observant of particular truth M de Bréquigny almost the latest of those excellent antiquaries whose memoirs so much illustrate the French Academy of Inscriptions, has discussed the history of Calais, and particularly this remarkable portion of it Mém. de l'Académie des Inscriptions, t I

Petrarch has drawn a lamentable picture of the state of France in 1360, when he paid a visit to Paris. I could not believe, he says, that this was the same kingdom which I had once seen so rich and flourishing Nothing presented itself to my eyes but a fearful solitude, an extreme poverty, lands uncultivated houses in ruins Even the neighborhood of Paris manifested everywhere marks of destruction and conflagration The streets are deserted, the roads overgrown with weeds the whole is a vast solitude Mém de Pétrarque, t III p 511

these provinces complete The first six articles of the treaty expressly surrender them to the King of England By the seventh, John and his son engaged to convey within a year from the ensuing Michaelmas all their rights over them, and especially those of sovereignty and feudal appeal The same words are repeated still more emphatically in the eleventh and some other articles The twelfth stipulates the exchange of mutual renunciations, by John, of all right over the ceded countries, by Edward, of his claim to the throne of France At Calais the treaty of Bretigni was renewed by John, who, as a prisoner, had been no party to the former compact, with the omission only of the twelfth article, respecting the exchange of renunciations But that it was not intended to waive them by this omission is abundantly manifest by instruments of both the kings, in which reference is made to their future interchanges at Bruges, on the feast of St Andrew, 1361 And, until that time should arrive, Edward promises to lay aside the title and arms of France (an engagement which he strictly kept[k]), and John to act in no respect as king or suzerain over the ceded provinces Finally, on November 15, 1361, two commissioners are appointed by Edward to receive the renunciations of the King of France at Bruges on the ensuing feast of St Andrew,[l] and to do whatever might be mutually required by virtue of the treaty These, however, seem to have been withheld, and the twelfth article of the treaty of Bretigni was never expressly completed By mutual instruments, executed at Calais, October 24, it had been declared that the sovereignty of the ceded provinces, as well as Edward's right to the crown of France, should remain as before, although suspended as to its exercise, until the exchange of renunciations, notwithstanding any words of present conveyance or release in the treaties of Bretigni and Calais And another pair of letters patent dated October 26, contains the form of renunciations, which, it is mutually declared, should have effect by virtue of the present letters, in case one party should be ready to exchange such renunciations at the time and place appointed and the other should make default therein These instruments executed at Calais are so prolix and so studiously enveloped, as it seems, in the obscurity of

[k] Edward gives John the title of King of France in an instrument bearing date at Calais, October 22, 1360. Rymer t. vi p. 317 The treaty was signed October 24. Id. p 319.

[l] Rym. t. vi. p. 331.

technical language, that it is difficult to extract their precise intention It appears, nevertheless, that whichever party was prepared to perform what was required of him at Bruges on November 30, 1361, the other then and there making default, would acquire not only what our lawyers might call an equitable title, but an actual vested right, by virtue of the provision in the letters-patent of October 26, 1360 The appointment above mentioned of Edward's commissioners on November 15, 1361, seems to throw upon the French the burden of proving that John sent his envoys with equally full powers to the place of meeting, and that the non-interchange of renunciations was owing to the English government But though an historian, sixty years later (Juvenal des Ursins), asserts that the French commissioners attended at Bruges, and that those of Edward made default, this is certainly rendered improbable by the actual appointment of commissioners made by the King of England on the 15th of November, by the silence of Charles V after the recommencement of hostilities, who would have rejoiced in so good a ground of excuse, and by the language of some English instruments, complaining that the French renunciations were withheld [m] It is suggested by the French authors that Edward was unwilling to execute a formal renunciation of his claim to the crown But we can hardly suppose that, in

[m] It appears that, among other alleged infractions of the treaty, the King of France had received appeals from Armagnac Albret and other nobles of Aquitaine not long after the peace For in February 1362 a French envoy the Count de Tancarville being in England, the privy council presented to Edward their bill of remonstrances against this conduct of France et semble au conseil le roy d Angleterre que consideré la fourme de la ditte paix, que tant estoit honourable et proffitable au royaume de France et à toute chrestienté que la recept on desd ttes appellacions n a mie esté bien fa te ne passee si ordenément ne a si bon affection et amour, comme il dro t avoir esté fait de raison parmi l effet et l intention de la paix et aill ances affermees et entr eux semble estre moult prejudiciables et contraires à l onneur et a l estat du roy et de son fils le prince et de toute la ma son d Angleterre et pourra estre evidente mat ère de rebellion des subg ez et aussi donner tres grant occasion d enfraindre la paix si bon remede sur ce n y soit mis plus hastivement Upon the whole they conclude that if the King of France would repair this trespass and send his renunciation of sovereignty the king should send his of the title of France Martenne Thes Anec t 1 p 1487

Four princes of the blood or as they are termed Seigneurs des Fleur de Lys were deta ned as hostages for the due execution of the treaty of Bretigni which from whatever pretence was delayed for a cons derable time Anxious to obtain their liberty they signed a treaty at London in November 1362 by which among other provisions it was stipulated that the King of France should send fresh letters under his seal conveying and releasing the territories ceded by the peace without the clause contained in the former letters retaining the ressort et que en ycelles lettres soit expressement compris transport de la souveraineté et du ressort &c Et le roi d Angleterre et ses enfans ferront semblablement aut els renonciations sur ce q il doit faire de sa partie Rymer t vi p 396 This treaty of London was never rat fied by the French government but I use it as a proof that Edward imputed the want of mutual renunciations to France and was himself ready to perform his part of the treaty

order to evade this condition, which he had voluntarily imposed upon himself by the treaties of Bretigni and Calais, he would have left his title to the provinces ceded by those conventions imperfect He certainly deemed it indefeasible, and acted, without any complaint from the French court, as the perfect master of those countries He created his son Prince of Aquitaine, with the fullest powers over that new principality, holding it in fief of the crown of England by the yearly rent of an ounce of gold n And the court of that great prince was kept for several years at Bordeaux

I have gone something more than usual into detail as to these circumstances, because a very specious account is given by some French historians and antiquaries which tends to throw the blame of the rupture in 1368 upon Edward III o Unfounded as was his pretension to the crown of France, and actuated as we must consider him by the most ruinous ambition, his character was unblemished by ill faith There is no apparent cause to impute the ravages made in France by soldiers formerly in the English service to his instigation, nor any proof of a connection with the King of Navarre subsequently to the peace of Bretigni But a good lesson may be drawn by conquerors from the change of fortune that befell Edward III A long warfare, and unexampled success, had procured for him some of the richest provinces of France Within a short time he was entirely stripped of them, less through any particular misconduct than in consequence of the intrinsic difficulty of preserving such acquisitions The French were already knit together as one people, and even those

n Rym t vi pp 385 389 One clause is remarkable Edward reserves to h m self the r ght of creat ng the prov nce of Aqu ta ne into a k ngdom. So h gh were the notions of th s great monarch in an age when the pr v lege of creat ng new k ngdoms was deemed to belong only to the pope and the emperor Et am si per nos hujusmod prov nciæ ad regal s honor s t tulum et fast g um imposterum sublimentur quam erec t onem fac endam per nos ex tunc spec al ter reservamus.

o Bes des V llaret and other h s tor ans the reader who feels any cu rios ty on th s subject may consult three memo rs in the 15th volume of the Academy of Inscript ons by MM. Sécousse Sal er and Bonamy —These d st ngu shed ant quar es un te but the th rd with much less confidence and pass on than the other two n cl arg ing the om ssion upon Edward The observations in the text w ll serve I hope to repel the r arguments wh ch I may be perm tted to observe no Eng lish writer has h therto undertaken to answer Th s is not said in order to assume any praise to myself in fact I have been gu ded in a great degree by one of the adverse counsel M Bonamy whose statement of facts is very fa r and makes me suspect a l ttle that he saw the weakness of h s own cause

The author ty of Christ ne de Pisan, a contemporary panegyr st of the French k ng is not perhaps very ma ter al in such a quest on but she seems wholly ignorant of th s supposed om s s on on Edward s s de and puts the just ce of Charles V s war on a very d fferent bas s namely that treaties not conducive to the publ c interest ought not to be kept —Collect on des Mé mo res t v p 137 A princ ple more often acted upon than avowed!

whose feudal duties sometimes led them into the field against their sovereign could not endure the feeling of dismemberment from the monarchy When the peace of Bretigni was to be carried into effect, the nobility of the South remonstrated against the loss of the king's sovereignty, and showed, it is said, in their charters granted by Charlemagne, a promise never to transfer the right of protecting them to another The citizens of Rochelle implored the king not to desert them, and protested their readiness to pay half their estates in taxes, rather than fall under the power of England John with heaviness of heart persuaded these faithful people to comply with that destiny which he had not been able to surmount At length they sullenly submitted. we will obey, they said, the English with our lips, but our hearts shall never forget their allegiance[p] Such unwilling subjects might perhaps have been won by a prudent government, but the temper of the Prince of Wales, which was rather stern and arbitrary, did not conciliate their hearts to his cause[q] After the expedition into Castile, a most injudicious and fatal enterprise, he attempted to impose a heavy tax upon Guienne This was extended to the lands of the nobility, who claimed an immunity from all impositions Many of the chief lords in Guienne and Gascony carried their complaints to the throne of Charles V, who had succeeded his father in 1364, appealing to him as the prince's sovereign and judge [A D 1368] After a year's delay the king ventured to summon the Black Prince to answer these charges before the peers of France, and the war immediately recommenced between the two countries[r]

Though it is impossible to reconcile the conduct of Charles upon this occasion to the stern principles of rectitude which ought always to be obeyed, yet the exceeding injustice of Edward in the former war, and the miseries which he inflicted upon an unoffending people in the prosecution of his claim, will go far towards extenuating this breach of the treaty of Bretigni It is observed, indeed, with some truth by Rapin

[p] Froissart part i. chap. 314.

[q] See an anecdote of his difference with the Seigneur d'Albret one of the principal barons in Gascony to which Froissart who was then at Bordeaux ascribes the alienation of the southern nobility chap. 244.—Edward III. soon after the peace of Bretigni revoked all his grants in Guienne.—Rymer t. vi. p. 392.

[r] On November 30, 1368, some time before the summons of the Prince of Wales, a treaty was concluded between Charles and Henry King of Castile, wherein the latter expressly stipulates that whatever parts of Guienne or England he might conquer he would restore up to the King of France.—Rymer t. vi. p. 598.

the springs of the system depend upon one central force, these accidents, which are sure in the course of a few generations to recur, can scarcely fail to dislocate the whole machine During the forty years that Charles VI bore the name of king, rather than reigned in France, that country was reduced to a state far more deplorable than during the captivity of John

A great change had occurred in the political condition of France during the fourteenth century As the feudal militia became unserviceable, the expenses of war were increased through the necessity of taking troops into constant pay, and while more luxurious refinements of living heightened the temptations to profuseness the means of enjoying them were lessened by improvident alienations of the domain Hence, taxes, hitherto almost unknown were levied incessantly, and with all those circumstances of oppression which are natural to the fiscal proceedings of an arbitrary government These, as has been said before, gave rise to the unpopularity of the two first Valois and were nearly leading to a complete revolution in the convulsions that succeeded the battle of Poitiers The confidence reposed in Charles V s wisdom and economy kept everything at rest during his reign though the taxes were still very heavy But the seizure of his vast accumulations by the Duke of Anjou and the ill faith with which the new government imposed subsidies, after promising their abolition, provoked the people of Paris and sometimes of other places to repeated seditions The States General not only compelled the government to revoke these impositions and restore the nation at least according to the language of edicts, to all their liberties but with less wisdom refused to make any grant of money Indeed a remarkable spirit of democratical freedom was then rising in those classes on whom the crown and nobility had so long trampled An example was held out by the Flemings who always tenacious of their privileges because conscious of their ability to maintain them were engaged in a furious conflict with Louis Count of Flanders s

s The Flemish rebellion which originated in an attempt suggested by bad advisers to the count to impose a tax upon the people of Ghent without their consent is related in a very interesting manner by Froissart p ii. c 37 &c. who equals Herodotus in simplicity, liveliness and power over the heart I would advise the historical student to acquaint himself with these transactions and with the corresponding tumults at Paris.

They are among the eternal lessons of history for the unjust encroachments of courts the intemperate passions of the multitude the ambition of demagogues the cruelty of victorious factions will never cease to have their parallels and their analogies while the military achievements of distant times

of Orleans; they had sworn reciprocal friendship, and participated, as was the custom, in order to render these obligations more solemn, in the same communion. In the midst of this outward harmony, the Duke of Orleans was assassinated in the streets of Paris [A.D. 1407.] After a slight attempt at concealment, Burgundy avowed and boasted of the crime, to which he had been instigated, it is said, by somewhat more than political jealousy.[y] From this fatal moment the dissensions of the royal family began to assume the complexion of civil war. The queen, the sons of the Duke of Orleans, with the dukes of Berry and Bourbon, united against the assassin. But he possessed, in addition to his own appanage of Burgundy, the county of Flanders as his maternal inheritance; and the people of Paris, who hated the Duke of Orleans, readily forgave, or rather exulted in his murder.[z]

It is easy to estimate the weakness of the government, from the terms upon which the Duke of Burgundy was permitted to obtain pardon at Chartres, a year after the perpetration of the crime. As soon as he entered the royal presence, everyone rose, except the king, queen, and dauphin. The duke, approaching the throne, fell on his knees, when a lord, who acted as a sort of counsel for him, addressed the king: "Sire, the Duke of Burgundy, your cousin and servant, is come before you, being informed that he has incurred your displeasure, on account of what he caused to be done to the Duke

[y] Orleans is said to have boasted of the Duchess of Burgundy's favors. Vill. t. xii. p. 474. Amelgard, who wrote about eighty years after the time, says, vim etiam inferre attentare præsumpsit. Notices des Manuscrits du Roi, t. i. p. 411.

[z] Michelet represents this young prince as regretted and beloved; but his language is full of those strange contrasts and inconsistencies which, for the sake of effect, this most brilliant writer sometimes employs. Il avait, dans ses emportemens de jeunesse terriblement vexé le peuple; il fut maudit du peuple, pleuré du peuple. Vivant il couta bien de larmes, mais combien plus mort! Si vous eussiez demandé a la France si ce jeune homme était bien digne de tante d'amour, elle eut répondu, Je l'aimais. Ce n'est pas seulement pour le bien qu'on aime, qui aime aime tout, les defauts aussi. Celui ci plut comme il était, mêlé de bien et de mal. (Hist. de France, vi. 6.) What is the meaning of this love for one who he has just told us was cursed by the people? And if Paris was the representative of France, how did the people show their affection for the Duke of Orleans, when they were openly and vehemently the partisans of his murderer? On the first return of the Duke of Burgundy to Paris after the assassination, the citizens shouted 'Noel,' the usual cry on the entrance of the king to the great displeasure of the queen and the princes. Et pour vrai comme dit est dessus, il estoit très fort aymé du commun peuple de Paris, et avoient grand espérance qu'iceluy duc eust très grand affection au royaume, et à la chose publicque, et avoient souvenance des grans tailles qui avoient esté mises sus depuis la mort du Duc Philippe de Bourgogne père d'iceluy jusques à l'heure présente, lesquelles ils entendoient que feust par le moyen dudit Duc d'Orleans. Et pource estoit grandement encouru en l'indignation d'iceluy peuple, et leur sembloit que Dieu de sa grace les avoit très grandement pour recommandez, quand il avoit souffert qu'ils fussent hors de sa subjection et gouvernement, et qu'ils en estoient delivrez. Monstrelet, 34. Compare this with what M. Michelet has written.

of Orleans your brother, for your good and that of your kingdom, as he is ready to prove when it shall please you to hear it, and therefore requests you, with all humility, to dismiss your resentment towards him, and to receive him into your favor." [a]

This insolent apology was all the atonement that could be extorted for the assassination of the first prince of the blood It is not wonderful that the Duke of Burgundy soon obtained the management of affairs, and drove his adversaries from the capital [A D 1410] The princes, headed by the father-in-law of the young Duke of Orleans, the Count of Armagnac, from whom their party was now denominated, raised their standard against him, and the north of France was rent to pieces by a protracted civil war, in which neither party scrupled any extremity of pillage or massacre Several times peace was made, but each faction, conscious of their own insincerity, suspected that of their adversaries The king, of whose name both availed themselves, was only in some doubtful intervals of reason capable of rendering legitimate the acts of either. The dauphin, aware of the tyranny which the two parties alternately exercised, was forced, even at the expense of perpetuating a civil war, to balance one against the other, and permit neither to be wholly subdued He gave peace to the Armagnacs at Auxerre, in despite of the Duke of Burgundy, and, having afterwards united with them against this prince, and carried a successful war into Flanders, he disappointed their revenge by concluding with him a treaty at Arras [A D 1414]

This dauphin and his next brother died within sixteen months of each other, by which the rank devolved upon Charles, youngest son of the king The Count of Armagnac, now Constable of France, retained possession of the government But his severity, and the weight of taxes, revived the Burgundian party in Paris, which a rigid proscription had endeavored to destroy [April, 1417] He brought on his head the implacable hatred of the queen, whom he had not only shut out from public affairs but disgraced by the detection of her gallantries Notwithstanding her ancient enmity to the Duke of Burgundy, she made overtures to him and, being delivered by his troops from confinement, declared herself openly on his side [A D 1417] A few obscure persons stole the city

[a] Monstrelet, part i. f. 112.

keys, and admitted the Burgundians into Paris The tumult which arose showed in a moment the disposition of the inhabitants, but this was more horribly displayed a few days afterwards, when the populace, rushing to the prisons, massacred the Constable d Armagnac and his partisans [June 12, 1418] Between three and four thousand persons were murdered on this day, which has no parallel but what our own age has witnessed, in the massacre perpetrated by the same ferocious populace of Paris, under circumstances nearly similar Not long afterwards an agreement took place between the Duke of Burgundy, who had now the king s person as well as the capital in his hands, and the dauphin, whose party was enfeebled by the loss of almost all its leaders [A D 1419] This reconciliation, which mutual interest should have rendered permanent, had lasted a very short time, when the Duke of Burgundy was assassinated at an interview with Charles, in his presence, and by the hands of his friends, though not, perhaps, with his previous knowledge[b] From whomsoever the crime proceeded, it was a deed of infatuation, and plunged France afresh into a sea of perils, from which the union of these factions had just afforded a hope of extricating her

It has been mentioned already that the English war had almost ceased during the reigns of Richard II and Henry IV The former of these was attached by inclination, and latterly by marriage, to the court of France, and though the French government showed at first some disposition to revenge his dethronement, yet the new king's success, as well as domestic

b There are three suppos t ons con ce vable to expla n th s important passage in h story the assass nat on of John Sanspeur 1 It was pretended by the dauph n s fr ends at the t me and has been ma nta ned more lately (St Fo x Essa s sur Par s t. p 209 ed t. 1767), that he had premed tated the murder of Charles and that h s own was an act of self-defence Th s s, I th nk quite improbable the dauph n had a great army near the spot wh e the duke was only attended by five hundred men V llaret indeed and St. Fo x n order to throw susp c on upon the Duke of Burgundy s mot ves, assert that Henry V accused h m of hav ng made proposals to h m wh ch he cou d not accept w thout offend ng God and con jecture that th s m ght mean the assas s nat on of the dauph n But the ex press ons of Henry do not re ate to any priva e proposals of the duke but to demands made by h m and the queen as prox es for Cha les VI n conference for peace wh ch he says he could not accept without offending God and con travening his own letters patent (Ry mer t x p 790) It is not, however very clear what th s means. 2 The next hypothes s s that t was the de l berate act of Charles But h s youth h s feebleness of sp r t and espec ally the consternat on into wh ch by all test mon es he was thrown by the event are rather adverse to th s ex planat on 3 It remains only to con clude that Tanegu de Chastel and other favor tes of the dauph n long at tached to the Orleans fact on who justly regarded the duke as an infamous assass n and m ght question h s s n cer ty or the r own safety if he should rega n the ascendant took advantage of th s opportun ty to comm t an act of retal at on less cr m nal but not less ru nous in its consequences than that wh ch had provoked t Charles how ever, by h s subsequent conduct recog n zed the r deed and naturally exposed h mself to the re entment of the young Duke of Burgundy

The flower of French chivalry was mowed down in this fatal day, but especially the chiefs of the Orleans party, and the princes of the royal blood, met with death or captivity Burgundy had still suffered nothing; but a clandestine negotiation had secured the duke's neutrality, though he seems not to have entered into a regular alliance till a year after the battle of Azincourt, when, by a secret treaty at Calais, he acknowledged the right of Henry to the crown of France, and his own obligation to do him homage, though its performance was to be *suspended till Henry should become master of a considerable* part of the kingdom[e] In a second invasion the English achieved the conquest of Normandy, and this, in all subsequent negotiations for peace during the life of Henry, he would never consent to relinquish After several conferences, which his demands rendered abortive, the French court at length consented to add Normandy to the cessions made in the peace of Bretigni,[f] and the treaty, though laboring under some difficulties, seems to have been nearly completed, when the Duke of Burgundy, for reasons unexplained, suddenly came to a reconciliation with the dauphin This event, which must have been intended adversely to Henry, would probably have broken off all parley on the subject of peace, if it had not been speedily followed by one still more surprising, the assassination of the Duke of Burgundy at Montereau [Sept 10, 1419]

An act of treachery so apparently unprovoked inflamed *the minds of that powerful party which had looked up to the* duke as their leader and patron The city of Paris especially, abjured at once its respect for the supposed author of the murder, though the legitimate heir of the crown A solemn oath was taken by all ranks to revenge the crime, the nobility, the clergy, the parliament, vying with the populace in their invectives against Charles, whom they now styled only pretended (*soi disant*) dauphin Philip son of the assassinated duke who with all the popularity and much of the ability of his father, did not inherit all his depravity, was instigated by a pardonable excess of filial resentment to ally himself with the King of England These passions of the people and the

who advised the French to avoid an action had been in the battle of Poitiers fifty nine years before Villet xii p 355

[e] Compare Rym. t. ix pp 34, 138 304 394 The last reference is to the treaty of Calais

[f] Rym t ix. pp 628 763 Nothing can be more insolent than the tone of Henry s instructions to his commissioners p 628

Duke of Burgundy concurring with the imbecility of Charles VI and the rancor of Isabel towards her son led to the treaty of Troyes [May, 1420] This compact signed by the queen and duke as proxies of the king who had fallen into a state of unconscious idiocy stipulated that Henry V , upon his marriage with Catherine should become immediately regent of France and after the death of Charles succeed to the kingdom in exclusion not only of the dauphin but of all the royal family It is unnecessary to remark that these flagitious provisions were absolutely invalid. But they had at the time the strong sanction of force and Henry might plausibly flatter himself with a hope of establishing his own usurpation as firmly in France as his father s had been in England What not even the comprehensive policy of Edward III the energy of the Black Prince the valor of their Knollyses and Chandoses nor his own victories could attain now seemed by a strange vicissitude of fortune to court his ambition During two years that Henry lived after the treaty of Troyes he governed the north of France with unlimited authority in the name of Charles VI The latter survived his son in law but a few weeks and the infant Henry VI was immediately proclaimed King of France and England under the regency of his uncle the Duke of Bedford

any decisive result, but the balance was clearly swayed in favor of England For this it is not difficult to assign several causes The animosity of the Parisians and the Duke of Burgundy against the Armagnac party still continued, mingled in the former with dread of the king's return, whom they judged themselves to have inexpiably offended The war had brought forward some accomplished commanders in the English army, surpassing, not indeed in valor and enterprise, but in military skill, any whom France could oppose to them Of these the most distinguished, besides the Duke of Bedford himself, were Warwick, Salisbury, and Talbot Their troops, too, were still very superior to the French But this, we must in candor allow, proceeded in a great degree from the mode in which they were raised The war was so popular in England that it was easy to pick the best and stoutest recruits,[l] and their high pay allured men of respectable condition to the service We find in Rymer a contract of the Earl of Salisbury to supply a body of troops, receiving a shilling a day for every man at-arms, and sixpence for each archer[m] This is, perhaps, equal to fifteen times the sum at our present value of money They were bound, indeed, to furnish their own equipments and horses But France was totally exhausted by her civil and foreign war, and incompetent to defray the expenses even of the small force which defended the wreck of the monarchy Charles VII lived in the utmost poverty at Bourges[n] The nobility had scarcely recovered from the fatal slaughter of Azincourt, and the infantry, composed of peasants or burgesses, which had made their army so numerous upon that day, whether from inability to compel their services, or experience of their inefficacy, were never called into the field It became almost entirely a war of partisans Every town in Picardy, Champagne, Maine, or wherever the contest might be carried on, was a fortress, and in the attack or defence of these garrisons the valor of both nations was called into constant exercise This mode of warfare was undoubtedly the best in the actual state of France, as it gradually improved her troops, and flushed them with petty successes But what prin-

[l] Monstrelet part 1 f 303

[m] Rym t x p 392. This contract was for 600 men at arms including 6 x bannerets and thirty four bachelors and for 1200 archers bien et suffisamment montez armez et arraiez comme a leurs estats appartient. The pay was for the earl 6s 8d a day for a banneret 4s for a bachelor 2s for every other man at arms 1s and for each archer 6d. Artillery men were paid higher than men at arms.

[n] Villaret t xiv p 302

of morals and government which twenty years of civil war had produced! Another favorite, La Tremouille, took the dangerous office, and, as might be expected, employed his influence against Richemont, who for some years lived on his own domains, rather as an armed neutral than a friend, though he never lost his attachment to the royal cause

It cannot therefore surprise us that with all these advantages the regent Duke of Bedford had almost completed the capture of the fortresses north of the Loire when he invested Orleans in 1428 If this city had fallen, the central provinces, which were less furnished with defensible places, would have lain open to the enemy, and it is said that Charles VII in despair was about to retire into Dauphine At this time his affairs were restored by one of the most marvellous revolutions in history A country girl overthrew the power of England We cannot pretend to explain the surprising story of the Maid of Orleans, for, however easy it may be to suppose that a heated and enthusiastic imagination produced her own visions, it is a much greater problem to account for the credit they obtained, and for the success that attended her Nor will this be solved by the hypothesis of a concerted stratagem, which, if we do not judge altogether from events, must appear liable to so many chances of failure, that it could not have suggested itself to any rational person However, it is certain that the appearance of Joan of Arc turned the tide of war, which from that moment flowed without interruption in Charles's favor A superstitious awe enfeebled the sinews of the English They hung back in their own country, or deserted from the army, through fear of the incantations by which alone they conceived so extraordinary a person to succeed *o* As men always make sure of Providence for an ally whatever untoward fortune appeared to result from preternatural causes was at once ascribed to infernal enemies, and such bigotry may be pleaded as an excuse, though a very miserable one, for the detestable murder of this heroine *p*

o Rym t x pp. 458-472. This however is conjecture for the cause of their desertion is not mentioned in these proclamations though Rymer has printed it in their title But the Duke of Bedford speaks of the turn of success as astonishing and due only to the superstitious fear which the English had conceived of a female magician. Rymer t x. p. 408.

p M de l'Averdy to whom we owe the copious account of the proceedings against Joan of Arc, as well as those which Charles VII instituted in order to rescind the former contained in the third volume of Notices des Manuscrits du Roi has justly made this remark which is founded on the eagerness shown by the University of Paris in the prosecution and on its being conducted

The spirit which Joan of Arc had roused did not subside France recovered confidence in her own strength, which had been chilled by a long course of adverse fortune The king, too, shook off his indolence,a and permitted Richemont to exclude his unworthy favorites from the court This led to a very important consequence The Duke of Burgundy, whose alliance with England had been only the fruit of indignation at his father's murder, fell naturally, as that passion wore out,

disregarded by a merciless fury. Garrisons surrendering after a brave defence were put to death Instances of this are very frequent Henry V excepts Alain Blanchard, a citizen who had distinguished himself during the siege, from the capitulation of Rouen, and orders him to execution At the taking of a town of Champagne, John of Luxemburg, the Burgundian general, stipulates that every fourth and sixth man should be at his discretion, which he exercises by causing them all to be hanged *w* Four hundred English from Pontoise, stormed by Charles VII in 1441, are paraded in chains and naked through the streets of Paris, and thrown afterwards into the Seine This infamous action cannot but be ascribed to the king *x*

At the expulsion of the English, France emerged from the chaos with an altered character and new features of government The royal authority and supreme jurisdiction of the parliament were universally recognized Yet there was a tendency towards insubordination left among the great nobility, arising in part from the remains of old feudal privileges, but still more from that lax administration which, in the convulsive struggles of the war, had been suffered to prevail In the south were some considerable vassals, the houses of Foix, Albret, and Armagnac, who, on account of their distance from the seat of empire, had always maintained a very independent conduct The dukes of Brittany and Burgundy were of a more formidable character, and might rather be ranked among foreign powers than privileged subjects The princes, too, of the royal blood, who, during the late reign, had learned to partake or contend for the management, were ill inclined towards Charles VII, himself jealous, from old recollections, of their ascendency They saw that the constitution was verging rapidly towards an absolute monarchy, from the direction of which they would studiously be excluded This apprehension gave rise to several attempts at rebellion during the reign of Charles VII, and to the war, commonly entitled, for the

w Monstrelet part ii. f 79. This John of Luxemburg Count de Ligny was a distinguished captain on the Burgundian side, and for a long time would not acquiesce in the treaty of Arras. He disgraced himself by giving up to the Duke of Bedford his prisoner Joan of Arc for 10 000 francs. The famous Count of St Pol was his nephew and inherited his great possessions in the county of Vermandois. Monstrelet relates a singular proof of the good education which his uncle gave him. Some prisoners having been made in an engagement si fut le jeune Comte de St Pol mis en voye de guerre car le Comte de Ligny son oncle luy en fit occire aucuns de quel y prenoit grand plaisir part ii fol 95

x Villaret t xv p 37

Public Weal (*du Bien Public*), under Louis XI. Among the pretences alleged by the revolters in each of these, the injuries of the people were not forgotten;[y] but from the people they received small support. Weary of civil dissension, and anxious for a strong government to secure them from depredation, the French had no inducement to intrust even their real grievances to a few malcontent princes, whose regard for the common good they had much reason to distrust. Every circumstance favored Charles VII. and his son in the attainment of arbitrary power. The country was pillaged by military ruffians Some of these had been led by the dauphin to a war in Germany, but the remainder still infested the highroads and villages. Charles established his companies of ordonnance, the basis of the French regular army, in order to protect the country from such depredators. They consisted of about nine thousand soldiers, all cavalry, of whom fifteen hundred were heavy armed; a force not very considerable, but the first, except mere body-guards, which had been raised in any part of Europe as a national standing army.[z] These troops were paid out of the produce of a permanent tax, called the taille; an innovation still more important than the former. But the present benefit cheating the people, now prone to submissive habits, little or no opposition was made, except in Guienne, the inhabitants of which had speedy reason to regret the mild government of England, and vainly endeavored to return to its protection.[a]

dered it impossible to provide for the younger branches of the royal family by any other means It was restrained, however, as far as circumstances would permit Philip IV declared that the county of Poitiers, bestowed by him on his son should revert to the crown on the extinction of male heirs But this, though an important precedent, was not, as has often been asserted a general law Charles V limited the appanages of his own sons to twelve thousand livres of annual value in land By means of their appanages, and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood royal in France were at all times (for the remark is applicable long after Louis XI) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and in general to the people

No appanage had ever been granted to France so enormous as the duchy of Normandy One-third of the whole national revenue, it is declared was derived from that rich province Louis could not therefore sit down under such terms as, with his usual insincerity he had accepted at Conflans In a very short time he attacked Normandy and easily compelled his brother to take refuge in Brittany nor were his enemies ever able to procure the restitution of Charles s appanage During the rest of his reign Louis had powerful coalitions to withstand but his prudence and compliance with circumstances joined to some mixture of good fortune brought him safely through his perils The Duke of Brittany a prince of moderate talents was unable to make any formidable impression though generally leagued with the enemies of the king The less powerful vassals were successfully crushed by Louis with decisive vigor the duchy of Alençon was confiscated the Count of Armagnac was assassinated the Duke of Nemours, and the Constable of St Pol a politician as treacherous as Louis who had long betrayed both him and the Duke of Burgundy suffered upon the scaffold The king s brother Charles after disquieting him for many years died suddenly in Guienne which had finally been granted as his appanage with strong suspicions of having been poisoned by the king s contrivance [d] [A D 1472] Edward IV of England was too dissipated and

[d] Sismond however and Michelet do not believe that the Duke of Guienne was poisoned by his brother he had been ill for several months

ions, were abundant in population and wealth, fertile in corn, wine, and salt, and full of commercial activity. Thirty years of peace which followed the treaty of Arras, with a mild and free government, raised the subjects of Burgundy to a degree of prosperity quite unparalleled in these times of disorder, and this was displayed in general sumptuousness of dress and feasting. The court of Philip and of his son Charles was distinguished for its pomp and riches, for pageants and tournaments; the trappings of chivalry, perhaps without its spirit; for the military character of Burgundy had been impaired by long tranquillity [h]

During the lives of Philip and Charles VII. each understood the other's rank, and their amity was little interrupted. But their successors, the most opposite of human kind in character, had one common quality, ambition, to render their antipathy more powerful. Louis was eminently timid and suspicious in policy; Charles intrepid beyond all men, and blindly presumptuous: Louis stooped to any humiliation to reach his aim; Charles was too haughty to seek the fairest means of strengthening his party. An alliance of his daughter with the Duke of Guienne, brother of Louis, was what the malcontent French princes most desired and the king most dreaded; but Charles, either averse to any French connection, or willing to keep his daughter's suitors in dependence, would never directly accede to that or any other proposition for her marriage. On Philip's death in 1467, he inherited a great treasure, which he soon wasted in the prosecution of his schemes. These were so numerous and vast, that he had not time to live, says Comines, to complete them, nor would one-half of Europe have contented him It was his intention to assume the title

emption can hardly, therefore, have been inserted to gratify the pride of Philip, as historians suppose Is it not probable that, during his resentment against Charles, he might have made some vow never to do him homage, which this reservation in the treaty was intended to preserve?

It is remarkable that Villaret says the Duke of Burgundy was positively excused by the 25th article of the peace of Arras from doing homage to Charles, or his successors kings of France t xvi p 404. For this assertion too he seems to quote the Trésor des Chartes, where probably, the original treaty is preserved. Nevertheless it appears otherwise, as published by Monstrelet at full length, who could have no motive to falsify it, and Philip s conduct in doing homage to Louis is hardly compatible with Villaret s assertion Daniel copies Monstrelet without any observation In the same treaty Philip is entitled duke by the grace of God, which was reckoned a mark of independence, and not usually permitted to a vassal

[h] P. de Comines, l i c 2 and 3, l v c 9 Du Clercq, in Collection des Mémoires t ix p 389 In the investiture granted by John to the first Philip of Burgundy, a reservation is made that the royal taxes shall be levied throughout that appanage But during the long hostility between the kingdom and duchy this could not have been enforced and by the treaty of Arras Charles surrendered all right to tax the duke's dominions Monstrelet, f 114.

of king, and the Emperor Frederic III was at one time actually on his road to confer this dignity, when some suspicion caused him to retire, and the project was never renewed[1] It is evident that, if Charles's capacity had borne any proportion to his pride and courage or if a prince less politic than Louis XI had been his contemporary in France, the province of Burgundy must have been lost to the monarchy For several years these great rivals were engaged, sometimes in open hostility sometimes in endeavors to overreach each other, but Charles, though not much more scrupulous was far less an adept in these mysteries of politics than the king

Notwithstanding the power of Burgundy, there were some disadvantages in its situation It presented (I speak of all Charles's dominions under the common name Burgundy) a very exposed frontier on the side of Germany and Switzerland as well as France and Louis exerted a considerable influence over the adjacent princes of the empire as well as the United Cantons The people of Liège, a very populous city, had for a long time been continually rebelling against their bishops who were the allies of Burgundy, Louis was of course not backward to foment their insurrections, which sometimes gave the dukes a good deal of trouble The Flemings and especially the people of Ghent had been during a century noted for their republican spirit and contumacious defiance of their sovereign Liberty never wore a more unamiable countenance than among these burghers, who abused the strength she gave them by cruelty and insolence Ghent when Froissart wrote about the year 1400 was one of the strongest cities in Europe and would have required he says an army of two hundred thousand men to besiege it on every side so as to shut up all access by the Lys and Scheldt It contained eighty thousand men of age to bear arms[2] a calculation which although, as I presume, much exaggerated is evidence of great actual pop

[1] Garnier t xvi p 6. It is observable that Comines says not a word of this for which Garnier seems to quote Belcarius a writer of the sixteenth age But even Philippe when Monstrelets Louis's chancellor used menaces towards him interrupted the orator with these words Je veux que chacun seache que si j'eusse voulu je fusse roi Varet t xv p 44.

Charles had a vague notion of history and confounded the province or duchy of Burgundy which had always appertained to the French crown with Franche-Comte and other countries which had belonged to the kingdom of Burgundy Hence le talked at Dijon in 1473 to the estates of the former about the kingdom of Burgundy que ceux de France ont longtems usurpé et d celu fait duche que tous les sujets doivent bien avoir a regret et dit qu'il avait en soi des choses qui n'appartenait de savoir à nul qu'à lui Michelet (x 162) is the first who has published this

[2] Froissart, part i c 67

ulousness Such a city was absolutely impregnable at a time when artillery was very imperfect both in its construction and management Hence though the citizens of Ghent were generally beaten in the field with great slaughter, they obtained tolerable terms from their masters who knew the danger of forcing them to a desperate defence

No taxes were raised in Flanders or indeed throughout the dominions of Burgundy, without consent of the three estates In the time of Philip not a great deal of money was levied upon the people, but Charles obtained every year a pretty large subsidy, which he expended in the hire of Italian and English mercenaries[k] An almost uninterrupted success had attended his enterprises for a length of time, and rendered his disposition still more overweening His first failure was before Neuss a little town near Cologne the possession of which would have made him nearly master of the whole course of the Rhine, for he had already obtained the landgraviate of Alsace [A D 1474] Though compelled to raise the siege, he succeeded in occupying next year, the duchy of Lorraine But his overthrow was reserved for an enemy whom he despised, and whom none could have thought equal to the contest The Swiss had given him some slight provocation for which they were ready to atone but Charles was unused to forbear and perhaps Switzerland came within his projects of conquest At Granson in the Pays de Vaud he was entirely routed with more disgrace than slaughter[l] [A D 1476] But having reassembled his troops and met the confederate army

[k] Comines l iv c 13 It was very reluctantly that the Flemings granted any money Philip once begged for a tax *on salt promising never to ask* anything more but the people of Ghent and many others refused Du Clercq p 389 Upon his pretence of taking the cross they granted him a subsidy though less than he had requested on condition that it should not be levied if the crusade did not take place which put an end to the attempt The states knew well that the duke would employ any money they gave him in keeping up a body of gensdarmes like his neighbor the King of France and though the want of such a force exposed their country to pillage they were too good patriots to place the means of enslaving it in the hands of their sovereign Grand doute fasoient *les sujets et pour plusieurs raisons de* se mettre en cette subjection ou ils voyoient le royaume de France à cause de ses gens d'armes A la verité leur grand doute n'estoit pas sans cause car quand ils se trouvaient ainsi hommes d'armes *la volonté luy venoit d'en* avoir plus et de plus hardiment entreprendre contre tous ses voisins. Comines l i c 4 9

Du Clercq a contemporary writer of very good authority mentions *the story of a certain widow* who had remarried the day after her husband's death says that she was in some degree excusable because it was the practice of the duke and his officers to force rich widows into marrying their soldiers or other servants tom x p 48

[l] A famous diamond belonging to Charles of Burgundy was taken in the plunder of his tent by the Swiss at Granson After several changes of owners most of whom were ignorant of its value it became the first jewel in the French crown Garnier t xv p 361

of Swiss and Germans at Morat, near Friburg, he was again defeated with vast loss On this day the power of Burgundy was dissipated deserted by his allies, betrayed by his mercenaries, he set his life upon another cast at Nancy, desperately giving battle to the Duke of Lorraine with a small dispirited army, and perished in the engagement [A D 1477]

Now was the moment when Louis, who had held back while his enemy was breaking his force against the rocks of Switzerland came to gather a harvest which his labor had not reaped Charles left an only daughter, undoubted heiress of Flanders and Artois, as well as of his dominions out of France, but whose right of succession to the duchy of Burgundy was more questionable Originally the great fiefs of the crown descended to females, and this was the case with respect to the two first mentioned But John had granted Burgundy to his son Philip by way of appanage, and it was contended that the appanages reverted to the crown in default of male heirs In the form of Philip s investiture the duchy was granted to him and his lawful heirs without designation of sex The construction therefore, must be left to the established course of law This however, was by no means acknowledged by Mary, Charles s daughter who maintained both that no general law restricted appanages to male heirs and that Burgundy had always been considered as a feminine fief John himself having possessed it not by reversion as king (for descendants of the first dukes were then living) but by inheritance derived through females [m] Such was this question of succession between Louis XI and Mary of Burgundy, upon the merits of whose pretensions I will not pretend altogether to decide but shall only observe that if Charles had conceived his daughter to be excluded from this part of his inheritance he would probably at Conflans or Peronne where he treated upon the vantage ground have attempted at least to obtain a renunciation of Louis s claim

[m] It s advanced w th too much confidence by several French h stor ans, e ther that the ord nances of Ph l p IV and Charles V const t ted a general law aga nst the descent of appanages to fema e he rs or that th s was a fundamental la v of the monarchy Du Clos H st de Lou s XI t p 252 Gar n er H st de France t xv p 258 The la ter pos t on s refuted by frequent nstances of female success on th s Arto s had pas ed by a daughter of Lo s le Ma e nto tl e ho se of Burgundy As to the above-ment oned ord nances, the first appl es only to the county of I o t ers the second does not conta n a syllable that rela es to succ ess on (Ordonnances des Ro s t v p 54) Tl e doctr ne of exclud ng female he rs was more consonant to the pretended Sal c Law and the recent pr nc ples as to nal enab l ty of doma n than to the analogy of feudal ru es and precedents M Ga llard n t s Observat ons sur l H sto re de Velly V llaret et Garn er has a jud c ous note on th s subject t III p 304

There was one obvious mode of preventing all further contest and of aggrandizing the French monarchy far more than by the reunion of Burgundy This was the marriage of Mary with the dauphin, which was ardently wished in France Whatever obstacles might occur to this connection, it was natural to expect on the opposite side—from Mary's repugnance to an infant husband, or from the jealousy which her subjects were likely to entertain of being incorporated with a country worse governed than their own The arts of Louis would have been well employed in smoothing these impediments n But he chose to seize upon as many towns as, in those critical circumstances, lay exposed to him, and stripped the young duchess of Artois and Franche Comte Expectations of the marriage he sometimes held out, but, as it seems, without sincerity Indeed he contrived irreconcilably to alienate Mary by a shameful perfidy, betraying the ministers whom she had intrusted upon a secret mission to the people of Ghent, who put them to the torture, and afterwards to death in the presence and amidst the tears and supplications of their mistress Thus the French alliance becoming odious in France, this princess married Maximilian of Austria, son of the Emperor Frederic—a connection which Louis strove to prevert, though it was impossible then to foresee that it was ordained to retard the growth of France and to bias the fate of Europe during three hundred years [A D 1477] This war lasted till after the death of Mary, who left one son Philip and one daughter, Margaret By a treaty of peace concluded at Arras, in 1482 it was agreed that this daughter should become the dauphin s wife with Franche Comte and Artois, which Louis held already for her dowry to be restored in case the marriage should not take effect The homage of Flanders was reserved to the crown

Meanwhile Louis was lingering in disease and torments of mind, the retribution of fraud and tyranny Two years before his death he was struck with an apoplexy, from which he never

n Robertson as well as some other moderns have maintained on the authority of Commines that Louis XI ought in policy to have married the young princess to the Count of Angouleme father of Francis I a connection which she would not have disliked. But certainly nothing could have been more adverse to the interests of the French monarchy than such a marriage which would have put a new house of Burgundy at the head of those princes whose confederacies had so often endangered the crown Commines is one of the most judicious of historians but his sincerity may be rather doubtful in the opinion above mentioned for he wrote in the reign of Charles VIII when the Count of Angouleme was engaged in the same faction as himself

then endured and those he had formerly inflicted on others Indeed the whole of his life was vexation of spirit "I have known him,' says Commes, "and been his servant in the flower of his age, and in the time of his greatest prosperity, but never did I see him without uneasiness and care Of all amusements he loved only the chase, and hawking in its season And in this he had almost as much uneasiness as pleasure for he rode hard and got up early, and sometimes went a great way, and regarded no weather, so that he used to return very weary, and almost ever in wrath with someone I think that from his childhood he never had any respite of labor and trouble to his death And I am certain that, if all the happy days of his life, in which he had more enjoyment than uneasiness, were numbered, they would be found very few, and at least that they would be twenty of sorrow for every one of pleasure" r

Charles VIII was about thirteen years old when he succeeded his father Louis [A D 1483] Though the law of France fixed the majority of her kings at that age, yet it seems not to have been strictly regarded on this occasion and at least Charles was a minor by nature, if not by law A contest arose therefore for the regency, which Louis had intrusted to his daughter Anne, wife of the Lord de Beaujeu one of the Bourbon family The Duke of Orleans afterward Louis XII, claimed it as presumptive heir of the crown and was seconded by most of the princes Anne, however maintained her ground, and ruled France for several years in her brother s name with singular spirit and address in spite of the rebellions which the Orleans party raised up against her These were supported by the Dul e of Brittany the last of the great vassals of the crown whose daughter as he had no male issue, was the object of as many suitors as Mary of Burgundy

The duchy of Brittany was peculiarly circumstanced The inhabitants whether sprung from the ancient republicans of Armorica or as some have thought from an emigration of Britons during the Saxon invasion had not originally belonged to the body of the French monarchy They were governed by their own princes and laws though tributary, perhaps as the weaker to the stronger to the Merovingian kings s In

r Com nes l v c 13
s Gregory of Tours says that the Bre ons were subject to France from the death of Clov s and that the r chiefs were styled counts not k ngs l iv c 4 Charlemagne subdued the whole of

the ninth century the dukes of Brittany did homage to Charles the Bald, the right of which was transferred afterward to the dukes of Normandy This formality, at that time no token of real subjection, led to consequences beyond the views of either party For when the feudal chains that had hung so loosely upon the shoulders of the great vassals began to be straightened by the dexterity of the court, Brittany found itself drawn among the rest to the same centre The old privileges of independence were treated as usurpation, the dukes were menaced with confiscation of their fief their right of coining money disputed their jurisdiction impaired by appeals to the parliament of Paris However they stood boldly upon their right and always refused to pay liege homage which implied an obligation of service to the lord in contradistinction to simple homage, which was a mere symbol of feudal dependence †

About the time that Edward III made pretension to the crown of France a controversy somewhat resembling it arose in the duchy of Brittany between the families of Blois and Montfort This led to a long and obstinate war connected all along as a sort of underplot with the great drama of France and England At last Montfort Edward's ally by the defeat and death of his antagonist obtained the duchy, of which Charles V soon after gave him the investiture This prince and his family were generally inclined to English connections but the Bretons would seldom permit them to be effectual Two cardinal feelings guided the conduct of this brave and faithful people the one an attachment to the French nation and monarchy in opposition to foreign enemies the other a zeal for their own privileges and the family of Montfort in opposition to the encroachments of the crown In Francis II the present duke the male line of that family was about to be extinguished His daughter Anne was naturally the object of many suitors among whom were partic

Brittany Yet it seems clear from Nigellus, author of a metrical Life of Louis the Debonair that they were again almost independent There was even a march of the Brannic fonter which separated it from Ingelande In the ensuing reign of Charles the Bald Hincmar tells us regnum undique a Pagan et Normannis et fere Christianis, secedet Britannorum circumscriptum erat Epist. c. 8. See too Capitularia Car Calvi, A D 877 tit 3. At this time a certain Nomenoe had assumed the crown of Brittany and some of his successors bore the name of king They seem, however to have been feudally subject to France Charles the Simple ceded to the Normans whatever right he possessed over Brittany and the dukes of that country (the name of king was now dropped) always did homage to Normandy See Daru Hist de Bretagne.

† Villaret, t. xii. p 82 t. xv p 19.

NOTES TO BOOK I.

Note I

The evidence of Zosimus which is the basis of this theory of Dubos, cannot be called very slight Early in the fifth century, according to him, about the time when Constantine usurped the throne of Britain and Gaul, or, as the sense shows, a little later, in consequence of the incursions of the barbarians from beyond the Rhine, the natives of Britain taking up arms for themselves rescued their cities from these barbarians, and the whole Armorican territory, and other provinces of Gaul, ὅ Ἀρμόρικοι ἅπας, καὶ ἕτερα Γαλατῶν ἔθνη, κ τ λ, in imitation of the Britons liberated themselves in the same manner, expelling the Roman rulers and establishing an internal government ἐβεβλήκεσαν μὲν τοὺς Ῥωμαίων ἄρχοντας, ἴδιον δὲ κατ' ἐξουσίαν πολίτευμα κατεστήσαντο. Lib vi c 5 Guizot gives so much authority to this as to say of the Armoricans ' Ils se maintinrent toujours libres, entre les barbares et les Romains ' Introduction à la Collection des Mémoires vol i p 336 Sismondi pays little regard to it The proofs alleged by Daru for the existence of a king of Brittany named Conan early in the fifth century, would throw much doubt on the Armorican republic, but they seem to me rather weak Brittany, it may be observed by the way, was never subject to the Merovingian kings except sometimes in name Dubos does not think it probable that there was any central authority in what he calls the Armorican confederacy, but conceives the cities to have acted as independent states during the greater part of the fifth century (Hist de l Etablissement &c, vol i p 338) He gives however an enormous extent to Armorica supposing it to have comprised Aquitaine But though the contrary has been proved it is to be observed that Zosimus mentions other provinces of Gaul ἕτερα Γαλατῶν ἐπαρχίαι, as well as Armorica. Procopius by the word Ἀρβόρυχοι, seems to indicate all the inhabitants at least of Northern Gaul, but the passage is so ambiguous, and his acquaintance with that history so questionable that little can be inferred from it with any confidence On the whole the history of Northern Gaul in the fifth century is extremely obscure, and the trustworthy evidence very scanty

Sismondi (Hist des Français vol i p 134) has a good passage which it will be desirable to keep in mind when we launch into mediæval antiquities — Ce peu des mots a donné matiere à d amples commentaires et au développement de beaucoup de conjectures ingénieuses L abbé Dubos en expliquant le silence des historiens a fondé sur des sousentendus une histoire assez complete de la republique Armorique Nous serons souvent appelés à nous tenir en garde contre le zele des ecrivains qui ne satisfait point l aridité de nos chroniques et qui y suppleent par des divinations Plus d une fois le lecteur

characterist cs are not very d ss m lar The style of both is exceed ngly bad as has been severely not ced along with the r other defects by Ga llard n Ob servations sur l H sto re de Velly Vil laret, et Garnier (4 vols 12mo Paris 1806)

[This history is now but sl ghtly es teemed in France, especially the vol umes written by the Abbé Velly The wr ters were too much mbued w th the sp r t of the old monarchy (though no adulators of kings and rather l beral according to the standard of their own age) for those who have taken the sove re gnty of the people for the r creed Nor are they critical and exact enough for the present state of historical knowl edge S smondi and Michelet espec ally the former, are doubtless su perior b t the reader w ll not find n the latter as regular a narrat on of facts as in V elly and V llaret S smond has as many prejud ces on one s de as they have on the oppos te [1848]]

pourra etre surpris en voyant a combien peu se reduit ce que nous savons reellement sur un evenement assez celèbre pour avoir motive de gros livres

Note II

The Franks are not among the German tribes mentioned by Tacitus nor do they appear in history before the year 240 Guizot accedes to the opinion that they were a confederation of the tribes situated between the Rhine the Weser and the Main, as the Alemanni were a similar league to the south of the last river[a] Their origin may be derived from the necessity of defending their independence against Rome but they had become the aggressors in the period when we read of them in Roman history and like other barbarians in that age were often the purchased allies of the declining empire Their history is briefly sketched by Guizot (Essais sur l Histoire de France p 53), and more copiously by other antiquarians among whom M Lehuerou the latest and not the least original or ingenious conceives them to have been a race of exiles or outlaws from other German tribes taking the name Franc from *frech* fierce or bold[b] and settling at first by necessity near the mouth of the Elbe whence they moved onward to seek better habitations at the expense of less intrepid though more civilized nations Et ainsi naquit la premiere nation de l Europe moderne[c] Institutions Merovingiennes vol i p 91

An earlier writer considers the Franks as a branch of the great stock of the Suevi mentioned by Tacitus who he tells us majorem Germaniæ partem obtinent propriis adhuc nationibus nominibusque discreti quanquam in communi Suevi dicuntur Insigne gentis obliquare crinem nodoque substringere De Moribus German c. 38. Ammianus mentions the Salian Franks by name Francos eos quos consuetudo Salios appellavit See a memoir in the Transactions of the Academy of Brussels 1824 by M Devez sur l etablissement des Francs dans la Belgique

In the great battle of Chalons the Franks fought on the Roman side against Attila and we find them mentioned several times in the history of Northern Gaul from that time Lehuerou (Institutions Merovingiennes c. 11) endeavors to prove as Dubos had done that they were settled in Gaul far beyond Tournay and Cambray under Meroveus and Childeric though as subjects of the empire and Luden conjectures that the whole country between the Moselle and the Somme had fallen into their hands even as early as the reign of Honorius (Geschichte des Deutschen Volkes vol ii p 381) This is one of the obscure and debated points in early French history But the seat of the monarchy appears clearly to have been established at Cambray before the middle of the fifth century

Note III

This theory which is partly countenanced by Gibbon has lately been revived in almost its fullest extent by a learned and spirited investigator of early history Sir Francis Palgrave in his Rise and Progress of the English Commonwealth i 360 and it seems much in favor with M Raynouard in his Histoire du Droit Municipal en France M

a Alemann s generally supposed to mean all men Meyer however takes t for another form of A mann from Heermanner old ers.—Nouveaux Memoires de l Académie de Bruxelles vol. p 439.

b This etymology had been given by Thierry or was of older origin

c As M Lehuerou belongs to what is called the Roman school of French antiquarie he should not have brought the nation from beyond the Rhine.

the ancient prerogatives of that high office, they must have expired with the period of its annual duration But the Romans were disposed to revere in the person of their master that antique title which the emperors condescended to assume, the barbarian himself seemed to contract a sacred obligation to respect the majesty of the republic; and the successors of Theodosius, by soliciting his friendship, tacitly forgave and almost ratified the usurpation of Gaul" (Chap xxxviii) It does not appear to me, therefore, very material toward the understanding French history, what was the intention of Anastasius in conferring the name of consul on the king of the Franks It was a token of amity no doubt; a pledge, perhaps, that the court of Constantinople renounced the hope of asserting its pretensions to govern a province so irrecoverably separated from it as Gaul, but were it even the absolute cession of a right, which, by the usual law of nations, required something far more explicit, it would not affect in any degree the real authority which Clovis had won by the sword, and had exercised for more than twenty years over the unresisting subjects of the Roman empire.

A different argument for the theory of devolution of power from the Byzantine emperor on the Franks is founded on the cession of Justinian to Theodebert king of Austrasia, in 540 Provence, which continued in the possession of the emperors for some time after the conquest of Gaul by Clovis, had fallen into the hands of the Ostrogoths, then masters of Italy The alliance of the Frank king was sought by both parties, at the price of what one enjoyed and the other claimed—Provence, with its wealthy cities of Marseilles and Arles Theodebert was no very good ally, either to the Greeks or the Goths, but he occupied the territory, and after a few years it was formally ceded to him by Justinian "That emperor," in the words of Gibbon, who has not told the history very exactly, "generously yielding to the Franks the sovereignty of the countries beyond the Alps which they already possessed, absolved the provincials from their allegiance, and established on a more lawful, though not more solid, foundation, the throne of the Merovingians" Procopius, in his Greek vanity pretends that the Franks never thought themselves secure of Gaul until they obtained this sanction from the emperor "This strong declaration of Procopius" says Gibbon, "would almost suffice to justify the abbé Dubos" I cannot, however, rate the courage of that people so low as to believe that they feared the armies of Justinian which they had lately put to flight in Italy; nor do I know that a title of sixty years' possession gains much legality by the cession of one who had asserted no claim during that period Constantinople had tacitly renounced the western provinces of Rome by her inability to maintain them I must, moreover, express some doubt whether Procopius ever meant to say that Justinian confirmed to the Frank sovereign his rights over the whole of Gaul He uses indeed the word Γαλλίαν but that should I think, be understood according to the general sense of the passage, which would limit its meaning to Provence, their recent acquisition and that which the Ostrogoths had already relinquished to them Gibbon on the authority of Procopius goes on to say that the gold coin of the Merovingian kings, "by a singular privilege which was denied to the Persian monarch, obtained a legal currency in the empire But this legal currency is not distinctly mentioned by Procopius, though he strangely asserts that it was not lawful, οὐ θέμις, for the king of Persia to coin gold with his own effigy as if the θέμις of Constantinople were regarded at Seleucia There is reason to believe that the Goths as well as Franks, coined gold which might possibly circulate in the empire, without having strictly speaking a legal currency The expressions of Agathias, quoted above, that the Franks had nearly the same form of government, and

the same laws, as the Romans, may be understood as a mistaken view of what Procopius says in a passage which will be hereafter quoted, and which Agathias, a later writer, perhaps, has followed, that the Roman inhabitants of Gaul retained their institutions under the Franks, which was certainly true, though by no means more so than under the Visigoths

Note IV

It ought, perhaps, to be observed, that no period of ecclesiastical history, especially in France, has supplied more saints to the calendar It is the golden age of hagiology Thirty French bishops, under Clovis and his sons alone, are venerated in the Roman church, and not less than seventy one saints, during the same short period, have supplied some historical information, through their Lives in Acta Sanctorum "The foundation of half the French churches," says Sismondi, "dates from that epoch" (Vol i p 308) Nor was the seventh century much less productive of that harvest Of the service which the Lives of the Saints have rendered to history, as well as of the incredible deficiencies of its ordinary sources, some notion may be gained by the strange fact mentioned in Sismondi that a king of Austrasia Dagobert II, was wholly overlooked by historians, and his reign, from 674 to 678, only retrieved by some learned men in the seventeenth century, through the Life of our Saint Wilfred, who had passed through France on his way to Rome (Hist des Français, vol ii p 51) But there is a diploma of this prince in Rec des Hist vol iv p 685

Sismondi is too severe a censurer of the religious sentiment which actuated the men of this period It did not prevent crimes, even in those, frequently, who were penetrated by it But we cannot impute to the ascetic superstition of the sixth and seventh centuries, as we may to the persecuting spirit of later ages, that it occasioned them—crimes, at least, which stand forth in history, for to fraud and falsehood it, no question lent its aid The Lives of the Saints, amid all the mass of falsehood and superstition which incrusts them bear witness not only to an intense piety, which no one will dispute but to much of charity and mercy toward man But, even if we should often doubt particular facts from slenderness of proof, they are at least such as the compilers of these legends thought praiseworthy, and such as the readers of them would be encouraged to imitate [d]

St. Bathilda, of Anglo-Saxon birth, queen of Clovis II, redeeming her countrymen from servitude, to which the barbarous manners of their own people frequently exposed them, is in some measure a set off against the tyrant princes of the family into which she had come And many other instances of similar virtue are attested with reasonable probability Sismondi never fully learned to judge men according to a subjective standard—that is, their own notions of right and wrong, nor even to perceive the immediate good consequences of many principles as well as social institutions connected with them, which we would no more willingly tolerate at present than himself In this respect Guizot has displayed a more philosophical temper Still there may be some caution necessary not to carry this subjective estimate of human actions too far, lest we lose sight of their intrinsic quality

We have, unfortunately, to set against the saintly legends an enormous mass of better attested crimes, especially of oppression and

[d] M Ampere has well observed that it was not the mere interest of the story, nor even the ideal morality which constituted the principal charm of the legends of saints, it was the constant idea of Providence supporting the faithful in those troublous times and of saints always interfering in favor of the innocent—Hist Litt de la France avant le xiéme siecle ii 360.

cruelty Perhaps there is hardly any history extending over a century which records so much of this with so little information of any virtue any public spirit any wisdom as the ten books of Gregory of Tours The seventh century has no historian equally circumstantial but the tale of the seventh century is in substance the same The Roman fraud and perfidy mingled in baleful confluence, with the ferocity and violence of the Frank

> Those wild men's vices they received
> And gave them back their own.

If the church was deeply tainted with both these classes of crime it was at least less so especially with the latter, than the rest of the nation A saint might have many faults, but it is strongly to be presumed that mankind did not canonize such monsters as the kings and nobles of whom we read almost exclusively in Gregory of Tours. A late writer actuated by the hatred of antiquity and especially of kings nobles and priests which is too much the popular creed of France, has collected from age to age every testimony to the wickedness of the powerful His proofs are one sided and consequently, there is some unfairness in the conclusions but the facts are for the most part, irresistibly true. (Dulaure, Hist. de Paris passim.)

Note V

The Mayor of the Palace appears as the first officer of the crown in the three Frank kingdoms during the latter half of the sixth century He had the command as Guizot supposes of the Antrustions or vassals of the king Even afterwards the office was not as this writer believes properly elective though in the case of a minority of the king or upon other special occasions the *leudes* or nobles chose a mayor The first instance we find of such an election was in 575 when after the murder of Sigebert by Fredegonde his son Childebert being an infant, the Austrasian *leudes* chose Gogon for their mayor There seem however so many instances of elective mayors in the seventh century that although the royal consent may probably have been legally requisite it is hard to doubt that the office had fallen into the hands of the nobles Thus in 641 — Flaochatus genere Francus major domus in regnum Burgundiæ electione pontificum et cunctorum ducum a Nantechilde regina in hunc gradum honoris nobiliter stabilitur (Fredegar Chron c 89) And on the election of Ebroin — Franci in incertum vacillantes accepto consilio Fbruinum in hujus honoris curam ac dignitatem statuunt (c 92) On the death of Ebroin in 681 Franci Warratonem virum illustrem in locum ejus cum jussione regis majorem domus palatio constituunt These two instances were in Neustria the aristocratic power was still greater in the other parts of the monarchy

Sismondi adopts a very different theory clinging a little too much to the democratic visions of Mably If we knew better, he says the constitution of the monarchy perhaps we might find that the mayor like the Justiciary of Aragon was the representative not of the great but of the freemen and taken generally from the second rank in society charged to repress the excesses of the aristocracy as well as of the crown (Hist des Français vol ii p 4) Nothing appears to warrant this vague conjecture which Guizot wholly rejects as he does also the derivation of major domus from *morddohmen* a verb signifying to sentence to death which Sismondi brings forward to sustain his fanciful analogy to the Aragonese justiciary

The hypothesis indeed that the mayor of the palace was chosen out of the common freeholders and not the highest class is not only contrary to everything we read of the aristocratical denomination in the Merovingian kingdoms but to a passage in Fredegarius to which probably others might be added Protadius he informs us a mayor of Brunehaut's choice endeavored to oppress all men of high birth that no one might be found capable of holding the charge in his room (c 27) This indeed was in the sixth century before any sort of election was known But in the seventh the power of the great and not of the people meets us at every turn Mably himself would have owned that his democracy had then ceased to exercise any power

The Austrasian mayors of the palace were from the reign of Clotaire II men of great power and taken from the house of Pepin of Landen They carried forward ultimately for their own aggrandizement the aristocratic system which had overturned Brunehaut Ebroin on the other hand in Neustria must be considered as keeping up the struggle of the royal authority which he exercised in the name of several phantoms of kings against the encroachments of the aristocracy though he could not resist them with final success Sismondi (vol II p 64) fancies that Ebroin was a leader of the freemen against the nobles But he finds a democratic party everywhere and Guizot justly questions the conjecture (Collection des Memoires vol II p 320) Sismondi in consequence of this hypothesis favors Ebroin for whom it may be alleged that we have no account of his character but from his enemies chiefly the biographer of St Leger M Lehuerou sums up his history with apparent justice — Ainsi périt apres une administration de vingt ans un homme remarquable a tous égards mais que le triomphe de ses ennemis a failli desheriter de sa gloire Ses violences sont peu douteuses mais son genie ne l'est pas davantage et rien ne prouve mieux la terreur qu'il inspirait aux Austrasiens que les injures qu'ils lui ont prodiguees (Institutions Carolingiennes p 281)

Note VI

Aribert or rather Caribert brother of Dagobert I was declared king of Aquitaine in 628 but on his death in 631 it became a duchy dependent on the monarchy under his two sons with its capital at Toulouse. This dependence however appears to have soon ceased in the decay of the Merovingian line and for a century afterwards Aquitaine can hardly be considered as part of either the Neustrian or Austrasian kingdom L'ancienne population Romaine travaillait sans cesse a ressaisir son independance Les Francs avaient conquis mais ne possedaient vraiment pas ces contrees Des que leurs grandes incursions cessaient les villes et les campagnes se souleva ent et se confederaient pour secouer le joug (Guizot Cours d Hist Moderne I 209) This important fact though acknowledged in passing by most historians has been largely illustrated in the valuable Histoire de la Gaule Meridionale by M Fauriel

Aquitaine in its fullest extent extended from the Loire beyond the Garonne with the exception of Touraine and the Orleannois The people of Aquitaine in this large sense of the word were chiefly Romans with a few Goths The Franks as a conquering nation had scarcely taken up their abode in those provinces But undoubtedly the Merovingian kings possessed estates in the south of France which they liberally bestowed as benefices upon their *leudes* so that the chief men were frequently of Frank origin They threw off nevertheless their hereditary attachments and joined with the mass of their new countrymen in striving for the independence of Aquitaine After the battle of

Testry which subverted the Neustrian monarchy Aquitaine and even Burgundy ceased for a time to be French under Charles Martel they were styled the Roman countries (Michelet II 9)

Eudon by some called Eudes grandson of Caribert a prince of conspicuous qualities gained ground upon the Franks during the whole period of Pepin Heristal's power and united to Aquitaine not only Provence but a new conquest from the independent natives Gascony Eudon obtained in 721 a far greater victory over the Saracens than that of Charles Martel at Poitiers The slaughter was immense and confessed by the Arabian writers it even appears that a funeral solemnity in commemoration of so great a calamity was observed in Spain for four or five centuries afterwards (Fauriel III 79) But in its consequences it was far less important for the Saracens some years afterwards returned to avenge their countrymen and Eudon had no resource but in the aid of Charles Martel After the retreat of the enemy it became the necessary price of the service rendered by the Frank chieftain that Aquitaine acknowledged his sovereignty This however was still but nominal till Pepin determined to assert it more seriously and after a long war overcame the last of the ducal line sprung from Clotaire II which had displayed for almost a century and a half an energy in contrast with the imbecility of the elder branch. Even this as M Fauriel observes was little more than a change in the reigning family the men of Aquitaine never lost their peculiar nationality they remained a separate people in Gaul a people distinguished by their character and by the part which they were called to play in the political revolutions of the age (Vol III 300)

Note VII

Pepin Heristal was styled Duke of Austrasia but assumed the mayoralty of Neustria after his great victory at Testry in 687 which humbled for a long time the great rival branch of the monarchy But he fixed his residence at Cologne and his family seldom kept their court at Paris The Franks under Pepin his son and grandson seemed for a second time says Sismondi to have conquered Gaul it is a new invasion of the language the military spirit and the manners of Germany though only recorded by historians as the victory of the Austrasians over the Neustrians in a civil war The chiefs of the Carlovingian family called themselves like their predecessors kings of the Franks they appear as legitimate successors of Clovis and his family yet all is changed in their spirit and their manners (Vol II p 170)

This revival of a truly German spirit in the French monarchy had not been sufficiently indicated by the historians of the eighteenth century It began with the fall of Brunehaut which annihilated the scheme not peculiar to herself but carried on by her with remarkable steadiness of establishing a despotism analogous to that of the empire The Roman policy expired with her Clotaire II and Dagobert I were merely kings of barbarians exercising what authority they might but on no settled scheme of absolute power Their successors were unworthy to be mentioned though in Neustria through their mayors of the palace the royal authority may have been apparently better maintained than in the eastern portion of the kingdom The kingdoms of Austrasia and Neustria rested on different bases In the former the Franks were more numerous less scattered and as far as we can perceive had a more considerable nobility They had received a less tincture of Roman policy They were nearer to the mother country which had been as the earth to Antæus the source of perpetually recruited

vigor Burgundy a member latterly of the Neustrian monarchy had also a powerful aristocracy but not in so great a degree probably of Frank or even barbarian descent. The battle of Testry was the second epoch as the fall of Brunehaut had been the first in the restoration of a barbaric supremacy to the kingdom of Clovis and the benefices granted by Charles Martel were the third It required the interference of the Holy See in confirming the throne of the younger Pepin and still more the splendid qualities of Charlemagne to keep up even for a time the royal authority and the dominion of law It is highly important to keep in our minds this distinction between Austrasia and Neustria subsisting for some ages and in fact only replaced speaking without exact geographical precision by that of Germany and France

Note VIII

The Merovingian period is so briefly touched in the text as not I fear, to be very distinctly apprehended by every reader It may assist the memory to sketch rather a better outline distributing the period into the following divisions —

I The reign of Clovis —The Frank monarchy is established in Gaul, the Romans and Visigoths are subdued Christianity in its Catholic form is as entirely recognized as under the empire the Franks and Romans without greatly intermingling preserve in the main their separate institutions

II The reigns of his four sons till the death of Clotaire I the survivor in 561 —A period of great aggrandizement to the monarchy Burgundy and Provence in Gaul itself Thuringia Suabia and Bavaria on the other side of the Rhine are annexed to their dominions while every crime disgraces the royal line and in none more than in Clotaire I

III A second partition among his four sons ensues the four kingdoms of Paris Soissons Orleans and Austrasia revive but a new partition of these is required by the recent conquests and Gontran of Orleans without resigning that kingdom removes his residence to Burgundy The four kingdoms are reduced to three by the death of Caribert of Paris one afterwards very celebrated by the name Neustria[e] between the Scheldt and the Loire is formed under Chilperic, comprehending those of Paris and Soissons Caribert of Paris had taken Aquitaine which at his death was divided among the three survivors Austrasia was the portion of Sigebert This generation was fruitful of still more crimes than the last redeemed by no golden glory of conquest Fredegonde the wife of Chilperic diffuses a baleful light over this period But while she tyrannizes with little control in the west of France her rival and sister in crime Brunehaut wife of Sigebert and mother of Thierry II his successor has to encounter a powerful opposition from the Austrasian aristocracy and in this part of the monarchy a new feature develops itself the great proprietors or nobility act systematically with a view to restrain the royal power Brunehaut after many vicissitudes and after having seen her two sons on the thrones of Austrasia and Burgundy falls into the hands of Clotaire II king of the other division and is sentenced to a cruel death Clotaire unites the three Frank kingdoms

IV Reigns of Clotaire II and his son Dagobert I —The royal power

[e] Neustria, or Western France is first mentioned in a diploma of Childebert with the date of 558. But the genuineness of this has been denied the word never occurs in the history of Gregory of Tours as I find by the index and M Lehuerou seems to think it was not much used till after the death of Brunehaut, in 613.

though shaken by the Austrasian aristocracy, is still effective Dagobert a prince who seems to have rather excelled most of his family and to whose munificence several extant monuments of architecture and the arts are referred endeavors to stem the current He was the last of the Merovingians who appears to have possessed any distinctive character the *Insensati* follow After the reign of Dagobert most of the provinces beyond the Loire fall off as it may be said from the monarchy and hardly belong to it for a century

V The fifth period begins with the accession of Clovis II, son of Dagobert in 638 and terminates with Pepin Heristal's victory over the Neustrians at Testry in 687 It is distinguished by the apparent equality of the two remaining kingdoms, Burgundy having now fallen into that of Neustria and by the degradation of the royal line in each alike into puppets of the mayors of the palace It is in Austrasia the triumph of the aristocracy among whom the bishops are still more prominent than before Ebroin holds the mayoralty of Neustria with an unsteady command, but in Austrasia the progenitors of Pepin Heristal grow up for two generations in wealth and power, till he becomes the acknowledged chief of that part of the kingdom bearing the title of duke instead of mayor and by the battle of Testry puts an end to the independence of Neustria

VI From this time the family of Pepin is virtually sovereign in France though at every vacancy kings of the royal house are placed by them on the throne Charles Martel indeed son of Pepin is not acknowledged even in Austrasia for a short time after his father's death and Neustria attempts to regain her independence but he is soon called to power defeats like his father the western Franks and becomes in almost as great a degree as his grandson the founder of a new monarchy So completely is he recognized as sovereign though not with the name of king that he divides France as an inheritance among his three sons But soon one only Pepin the Short by fortune or desert becomes possessor of this goodly bequest In 752 the new dynasty acquires a legal name by the coronation of Pepin.

Note IX

The true cause M Michelet observes (Hist de France ii 39) of the Saxon wars which had begun under Charles Martel and were in some degree defensive on the part of the Franks was the ancient antipathy of race enhanced by the growing tendency to civilized habits among the latter This indeed seems sufficient to account for the conflict without any national antipathy It was that which makes the Red Indian perceive an enemy in the Anglo American and the Australian savage in the Englishman The Saxons in their deep forests and scantily cultivated plains could not bear fixed boundaries of land Their *gau* was indefinite the *mansus* was certain it annihilated the barbarian's only method of combining liberty with possession of land —the right of shifting his occupancy[f] It is not probable from subsequent events that the Saxons held very tenaciously by their religion but when Christianity first offered itself it came in the train of a conqueror Nor could Christianity according at least to the ecclesiastical system be made compatible with such a state of society as the German in that age Hence the Saxons endeavored to burn the first churches thus drawing retaliation on their own idols

The first apostles of Germany were English and of these the most

[f] Michelet refers to Grimm who is excellent authority The Saxons are likely to have maintained the old customs of the age of Tacitus longer than German tribes on the Rhine and Main.

remarkable was St Boniface But this had been in the time of Charles Martel and Pepin The labors of these missionaries were chiefly in Thuringia, Franconia, and Bavaria, and were rewarded with great success But we may here consider them only in their results on the Frank monarchy Those parts of Germany had long been subject to Austrasia, but, except so far as they furnished troops scarcely formed an integrant portion of that kingdom. The subjection of a heathen tribe is totally different from that of a Christian province With the Church came churches, and for churches there must be towns, and for towns a magistracy, and for magistracy, law and the means of enforcing it. How different was the condition of Bavaria or Hesse in the ninth century from that of the same countries in the seventh! Not outlying appendages to the Austrasian monarchy, hardly counted among its subjects, but capable of standing by themselves as co-ordinate members of the empire, an equipoise to France herself, full of populous towns, wealthy nobles and prelates, better organized and more flourishing states than their neighbors on the left side of the Rhine Charlemagne founded eight bishoprics in Saxony, and distributed the country into dioceses.

Note X

The project of substituting a Frank for a Byzantine sovereign was by no means new in 800 Gregory II, by a letter to Charles Martel in 741, had offered to renounce his allegiance to the empire placing Rome under the protection of the French chief, with the title of consul or senator The immediate government he doubtless meant to keep in the hands of the Holy See He supplicated, at the same time for assistance against the Lombards which was the principal motive for this offer Charles received the proposal with pleasure but his death ensued before he had time to take any steps towards fulfilling so glorious a destiny When Charlemagne acquired the rank of Patrician at Rome in 789 we may consider this as a part performance of Gregory II's engagement, and the supreme authority was virtually in the hands of the king of the Franks, but the renunciation of allegiance toward the Greek empire had never positively taken place, and there are said to have been some tokens of recognition of its nominal sovereignty almost to the end of the century

It is contended by Sir F Palgrave that Charlemagne was chosen by the Romans as lawful successor of Constantine V whom his mother Irene had dethroned in 795, the usage of the empire having never admitted a female sovereign And for this he quotes two ancient chronicles one of which however appears to have been copied from the other It is indeed true, which he omits to mention that Leo III had a singular scheme of a marriage between Charles and Irene which would for a time have united the empire The proposal was actually made, but prudently rejected by the Greek lady

It remains nevertheless to be shown by what right Leo III *cum omni Christiano populo* that is the priests and populace of degenerate Rome, could dispose of the entire empire or affect to place a stranger on the throne of Constantinople, for if Charles were the successor of Constantine V, we must draw this conclusion Rome we should keep in mind was not a jot more invested with authority than any other city, the Greek capital had long taken her place, and in every revolution of new Rome, the decrepit mother had without hesitation obeyed Nor does it seem to me exceedingly material if the case be such that Charlemagne was not styled emperor of the West or successor of Augustulus. It is evident that his empire relatively to that of the Greeks was western, and we do not find that either he or his family ever-

claimed an exclusive right to the imperial title The pretension would have been diametrically opposed both to prescriptive right and actual possession He wrote to the emperor Nicephorus successor of Irene as *fraternitas vestra*, but it is believed that the Greeks never recognized the title of a western barbarian In a later age indeed some presumed to reckon the emperor of Constantinople among kings A writer of the fourteenth century says in French — Or devez savoir qu il ne doit estre sur terre qu un seul empereur combien que celui de Constantinople estime estre seul empereur, mais non est il n est fors seulement qu un roy (Ducange voc Imperator which is worth consulting) The kings of France and Castile as well as our own Anglo Saxon monarchs in the tenth century and even those of Bulgaria sometimes assumed the imperial title But the Anglo Saxon preferred that of Basileus which was also a Byzantine appellation

The probable design of Charlemagne in accepting the title of emperor was not only to extend his power as far as possible in Italy, but to invest it with a sort of sacredness and prescriptive dignity in the eyes of his barbarian subjects These had been accustomed to hear of emperors as something superior to kings, they were themselves fond of pompous titles and the chancery of the new Augustus soon borrowed the splendid ceremonial of the Byzantine court His councillors approached him on their knees and kissed his feet Yet it does not appear from history that his own royal power certainly very considerable before was much enhanced after it became imperial He still took the advice and legislated with the consent of his *leudes* and bishops in fact he continued to be a German not a Roman sovereign In the reign of his family this prevalence of the Teutonic element in the Carlovingian polity became more and more evident the bishops themselves barbarian in origin and in manners cannot be reckoned in the opposite scale

This was a second failure of the attempt or at least the scheme of governing barbarians upon a Roman theory The first had been tried by the sons of Clovis and the high spirited Visigoth Brunehaut But the associations of Roman authority with the imperial name were too striking to be lost forever they revived again in the twelfth and thirteenth centuries with the civil law and gained strength with the Ghibelin faction in Italy Even in France and England as many think they were by no means ineffectual though it was necessary to substitute the abstract principle of royalty for the Lex Regia of the Roman empire

Note XI

A question of the utmost importance had been passed over in the elevation of Charlemagne to the imperial title It was that of hereditary succession No allusion as far as I have found was made to this in the irregular act by which the pope with what he called the Roman people transferred their allegiance from Constantinople to Aix la Chapelle It was indeed certain that the empire had not only passed for hereditary from the time of Augustus but ever since that of Diocletian had been partible among the imperial family at the will of the possessor Yet the whole proceeding was so novel and the pretensions of the Holy See implied in it so indefinite that some might doubt whether Charles had acquired along with the rank of *imperator* its ancient prerogatives. There was also a momentous consideration how far his Frank subjects accustomed latterly to be consulted on royal succession with their rights of election within the limits of the family positively recognized at the accession of Pepin and liable to become jealous of Roman theories of government would acquiesce in a simple devolution of the

title on the eldest born as his legal birthright In the first prospective arrangement, accordingly, which Charles made for the succession, that at Thionville, in 806, a partition among his three sons was designed, with the largest share reserved for the eldest But though Italy, by which he meant, as he tells us, Lombardy, was given to one of the younger, care is taken by a description of the boundaries to exclude Rome itself, as well as the whole exarchate of Ravenna, become by Pepin's donation, the patrimony of St Peter, nor is there the least allusion to the title of emperor Are we to believe that he relinquished the eternal city to its bishop, though styling himself, in this very instrument, Romani rector imperii and having literally gained not another inch of territory by that dignity? It is surely more probable that he reserved the sovereignty over Rome to be annexed to the rank of emperor whenever he should obtain that for his eldest son And on the death of this son, and of his next brother some years afterwards the whole succession devolving on Louis the Debonair, Charlemagne presented this prince to the great Placitum of the nobles and bishops at Aix la Chapelle in 813 requesting them to name him king and emperor No reference was made to the pope for his approbation, and thus the German principle of sovereignty gained a decisive victory over the Roman If some claim of the pope to intermeddle with the empire was intimated at the coronation of Louis at Rheims by Stephen II in 816 which does not seem certain, it could only have been through the pope s knowledge of the personal submissiveness to ecclesiastical power which was the misfortune of that prince He had certainly borne the imperial title from his father's death

In the division projected by Louis in 817 to take place on his death, and approved by an assembly at Aix, a considerable supremacy was reserved for the future emperor, he was constituted in effect a sort of suzerain, without whose consent the younger brothers could do nothing important Thus the integrity of the empire was maintained which had been lost in the scheme of Charlemagne in 806 But M Fauriel (vol iv p 83) reasonably suspects an ecclesiastical influence in suggesting this measure of 817, which was an overt act of the Roman or imperial against the barbarian party If the latter consented to this in 817, it was probably either because they did not understand it, or because they trusted to setting it aside And as is well known the course of events soon did this for them "It is indisputable" says Ranke, 'that the order of succession to the throne which Louis the Pious, in utter disregard of the warnings of his faithful adherents and in opposition to all German modes of thinking established in the year 817 was principally brought about by the influence of the clergy' (Hist of Reformation Mrs Austin s translation vol i p 9) He attributes the concurrence of that order in the subsequent revolt against Louis, to the endeavors he had made to deviate from the provisions of 819 in favor of his youngest son Charles the Bald

Note XII

The second period of Carlovingian history, or that which elapsed from the reign of Charles the Bald to the accession of Hugh Capet, must be reckoned the transitional state through scenes of barbarous anarchy from the artificial scheme devised by Charlemagne in which the Roman and German elements of civil policy were rather in conflict than in union to a new state of society—the feudal which though pregnant itself with great evil was the means both of preserving the frame of European policy from disintegration and of elaborating the moral and constitutional principles upon which it afterwards rested.

11 Append p 56 Meyer Institutions Judiciaires vol 1 p 419) In this we find named six Roman four Gothic and eight Salian judges It is certain that these judges could not have been taken relatively to the population of the three races in that part of France Does it not seem most probable that the Franks were still reckoned the predominant people? Probably however the personal distinction founded on difference of laws expired earlier in Neustria not that the Franks fell into the Roman jurisprudence but that the original natives adopted the feudal customs

This specious theory of hostile races in order to account for the downfall of the Carlovingian or Austrasian dynasty has not been unanimously received especially in the extent to which Thierry has urged it. M Gaudet the French editor of Richer (a contemporary historian whose narrative of the whole period from the accession of Eudes to the death of Hugh Capet is published by Pertz in the Monumenta Germaniæ Historica vol iii and contains a great quantity of new and interesting facts especially from A D 966 to 987) appeals to this writer in contradiction of the hypothesis of M Thierry The appeal however is not solely upon his authority since the leading circumstances were sufficiently known and to say the truth I think that more has been made of Richer s testimony in this particular view than it will bear Richer belonged to a monastery at Rheims and his father had been a man of some rank in the confidence of Louis IV and Lothaire He had therefore been nursed in respect for the house of Charlemagne though with deference to his editor I do not perceive that he displays any repugnance to the change of dynasty

Though the differences of origin and language so far as they existed might be by no means unimportant in the great revolution near the close of the tenth century they cannot be relied upon as sufficiently explaining its cause The partisans of either family were not exclusively of one blood The house of Capet itself was not of Roman but probably of Saxon descent The difference of races had been much effaced after Charles the Bald but it is to be remembered that the great beneficiaries the most wealthy and potent families in Neustria or France were of barbarian origin One people so far as we can distinguish them was by far the more numerous the other of more influence in political affairs The personal distinction of law however which had been the test of descent appears not to have been preserved in the north of France much after the ninth century and the Roman as has been said above had yielded to the barbaric element—to the feudal customs The Romance language on the other hand had obtained a complete ascendency and that not only in Neustria or the parts west of the Somme but throughout Picardy Champagne and part of Flanders But if we were to suppose that these regions were still in some way more Teutonic in sentiment than Neustria we certainly could not say the same of those beyond the Loire Aquitaine and Languedoc almost wholly Roman to use the ancient word or French as they might now be called among whose vine covered hills the barbarians of the Lower Rhine had hardly formed a permanent settlement or having done so had early cast off the slough of their rude manners had been the scenes of a long resistance to the Merovingian dynasty The tyranny of Chilperic and Clotaire the barbarism of the Frank invaders had created an indelible hatred of their yoke But they submitted without reluctance to the more civilized government of Charlemagne and displayed a spontaneous loyalty towards his line Never did they recognize at least without force the Neustrian usurpers of the tenth century or date their legal instruments in truth the chief sign of subjection that they gave by any other year than that of the Carlovingian sovereign If Charles the Simple reaped little but this nominal

allegiance from his southern subjects he had the satisfaction to reflect that they owned no one else

But a rapacious aristocracy had pressed so hard on the weakness of Charles the Bald and his descendants that the kingdom being wholly parcelled in great fiefs they had not the resources left to reward self interested services as before nor to resist a vassal far superior to themselves Laon was much behind Paris in wealth and populousness and yet even the two capitals were inadequate representatives of the proportionate strength of the king and the count. Power as simply taken was wholly on one side yet on the other was prejudice or rather an abstract sense of hereditary right and this sometimes became a source of power But the long greatness of one family, its manifest influence over the succession to the throne the conspicuous men whom it produced in Eudes and Hugh the Great had silently prepared the way for a revolution neither unnatural nor premature nor in any way dangerous to the public interests It is certainly probable that the Neustrian French had come to feel a greater sympathy with the house of Capet than with a line of kings who rarely visited their country and whom they could not but contemplate as in some adverse relation to their natural and popular chiefs But the national voice was not greatly consulted in those ages It is remarkable that several writers of the nineteenth century however they may sometimes place the true condition of the people in a vivid light are constantly relapsing into a democratic theory They do not by any means underrate the oppressed and almost servile condition of the peasantry and burgesses when it is their aim to draw a picture of society yet in reasoning on a political revolution such as the decline and fall of the German dynasty they ascribe to these degraded classes both the will and the power to effect it The proud nationality which spurned a foreign line of princes could not be felt by an impoverished and afflicted commonalty Yet when M Thierry alludes to the rumor that the family of Capet was sprung from the commons (some said as we read in Dante from a butcher) he adds —

Cette opinion qui se conserva durant plusieurs siecles ne fut pas nuisible a sa cause —as if there had been as effective a *tiers état* in 987 as 800 years afterward If however we are meant only to seek this sentiment among the nobles of France I fear that self interest personal attachments and a predominant desire of maintaining their independence against the crown were motives far more in operation than the wish to hear the king speak French instead of German

It seems upon the whole that M Thierry s hypothesis countenanced as it is by M Guizot will not afford a complete explanation of the history of France between Charles the Fat and Hugh Capet The truth is that the accidents of personal character have more to do with the revolutions of nations than either philosophical historians or democratic politicians like to admit If Eudes and Hugh the Great had been born in the royal line they would have preserved far better the royal power If Charles the Simple had not raised too high a favorite of mean extraction he might have retained the nobles of Lorraine and Champagne in their fidelity If Adalberon archbishop of Rheims had been loyal to the house of Charlemagne that of Capet would not at least so soon have asserded the throne If Louis V had lived some years and left a son to inherit the lineal right the more precarious claim of his uncle would not have undergone a disadvantageous competition with that of a vigorous usurper M Gaudet has well shown, in his notice on Richer that the opposition of Adalberon to Charles of Lorraine was wholly on personal grounds No hint is given of any national hostility but whatever of national approbation was given to the new family and doubtless in Neustrian France it was very prevalent must rather be ascribed to their own reputation than to any peculiar antipathy toward

of contemporaries for example those of Fulbert and of Yves bishops of Chartres or those of William III, duke of Guienne and many others you will see that the king of France was not without importance and that the most powerful suzerains treated him with great deference He appeals especially to the extant act of the consecration of Philip I in 1059 where a duke of Guienne is mentioned among the great feudatories and asks whether any other suzerain took possession of his rank with so much solemnity (Civilisation en France Leçon 42) As there was always a country called France and a French people so there was always a king of the French very far indeed from ruling the country called his kingdom and without influence on the greater part of the population but yet no foreigner and with his name inscribed at the head of the deeds of all the local sovereigns as one who was their superior and to whom they owed several duties (Leçon 43) It may be observed also that the Church recognized no other sovereign not that all the bishops held of him for many depended on the great fiefs but the ceremony of consecration game him a sort of religious character to which no one else aspired And Suger the politic minister of Louis VI and Louis VII made use of the bishops to maintain the royal authority in distant provinces (Leçon 42) This nevertheless rather proves that the germ of future power was in the kingly office than that Hugh Robert Henry and Philip exercised it The most remarkable instance of authority during their reigns was the war of Robert in Burgundy which ended in his bestowing that great fief on his brother I have observed that the duke of Guienne subscribes a charter of Henry I in 1051 (Rec des Historiens vol xi p 589) Probably there are other instances Henry uses a more pompous and sovereign phraseology in his diplomas than his father the young lion was trying his roar

I concur on the whole in thinking with M Guizot that in shunning the language of uninformed historians who spoke of all kings of France as equally supreme it had become usual to depreciate the power of the first Capetians rather too much He had however to appearance done the same a few years before the delivery of these lectures in 1829 for in his Collection of Memoirs (vol i p 6 published in 1825) he speaks rather differently of the first four reigns — C est l epoque ou le royaume de France et la nation française n ont existe a vrai dire que de nom He observes also that the chroniclers of the royal domain are peculiarly meagre as compared with those of Normandy

Note XV

It may excite surprise that in any sketch however slight of the reign of Philip IV no mention should be made of an event than which none in his life is more celebrated—the fate of the Knights Templars But the truth is that when I first attended to the subject almost forty years since I could not satisfy my mind on the disputed problem as to the guilt imputed to that order and suppressed a note which I had written as too inconclusive to afford any satisfactory decision Much has been published since on the Continent and the question has assumed a different aspect though perhaps I am not yet more prepared to give an absolutely determinate judgment than at first

The general current of popular writers in the eighteenth century was in favor of the innocence of the Templars in England it would have been almost paradoxical to doubt of it The rapacious and unprincipled character of Philip the submission of Clement V to his will the apparent incredibility of the charges from their monstrousness the just prejudice against confessions obtained by torture and retracted afterwards

—the other prejudice not always so just, but in the case of those not convicted on fair evidence deserving a better name in favor of assertions of innocence made on the scaffold and at the stake—created as they still preserve a strong willingness to disbelieve the accusations which came so suspiciously before us It was also often alleged that contemporary writers had not given credit to these accusations and that in countries where the inquiry had been less iniquitously conducted no proof of them was brought to light Of these two grounds for acquittal the former is of little value in a question of legal evidence, and the latter is not quite so fully established as we could desire

Raynouard who might think himself pledged to the vindication of the Knights Templars by the tragedy he had written on their fate or at least would naturally have thus imbibed an attachment to their cause took up their defence in a History of the Procedure This has been reckoned the best work on that side and was supposed to confirm their innocence The question appears to have assumed something of a party character in France as most history does the honor of the crown and still more of the church had advocates but there was a much greater number especially among men of letters who did not like a decision the worse for being derogatory to the credit of both. Sismondi it may easily be supposed scarcely treats it as a question with two sides but even Michaud the firm supporter of church and crown in his History of the Crusades takes the favorable view M Michelet however not under any bias towards either of these and manifestly so desirous to acquit the Templars that he labors by every ingenious device to elude or explain away the evidence is so overcome by the force and number of testimonies that he ends by admitting so much as leaves little worth contending for by their patrons He is the editor of the Proces des Templiers ' in the Documens Inedits 1841 and had previously given abundant evidence of his acquaintance with the subject in his Histoire de France vol iv pp 243 345 (Bruxelles edition)

But the great change that has been made in this process as carried forward before the tribunal of public opinion from age to age is owing to the production of fresh evidence The deeply learned orientalist M von Hammer now Count Hammer Purgstall in the sixth volume of a work published at Vienna in 1818 with the title Mines de l Orient exploitees [g] inserted an essay in Latin Mysterium Baphometis Revelatum seu Fratres Militiæ Templi qua Gnostici et quidem Ophiani Apostasiæ Idoloduliæ et Impuritatis convicti per ipsa eorum Monumenta.' This is designed to establish the identity of the idolatry ascribed to the Templars with that of the ancient Gnostic sects and especially with those denominated Ophites or worshippers of the serpent and to prove also that the extreme impurity which forms one of the revolting and hardly credible charges adduced by Philip IV is similar in all its details to the practice of the Gnostics

This attack is not conducted with all the coolness which bespeaks impartiality but the evidence is startling enough to make refutation apparently difficult. The first part of the proof which consists in identifying certain Gnostic idols or as some suppose amulets though it comes much to the same with the description of what are called Baphometic in the proceedings against the Templars published by Dupuy and since in the Documens Inedits is of itself sufficient to raise a considerable presumption We find the word *metis* continually on these images of which von Hammer is able to describe twenty four Baphomet is a secret word ascribed to the Templars. But the more important evidence is that furnished by the comparison of sculptures ex

[g] I give this French title but there is also a German title-page, as most of the memoirs are either in that language or in Latin.

tant on some Gnostic and Ophitic bowls with those in churches built by the Templars Of these there are many in Germany, and some in France Von Hammer has examined several in the Austrian domin ions and collected accounts of others It is a striking fact that in some we find concealed from the common observer images and symbols ex tremely obscene and as these which cannot here be more particularly adverted to betray the depravity of the architects and cannot be ex plained away we may not so much hesitate as at first to believe that impiety of a strange kind was mingled up with this turpitude The pre sumptions of course from the absolute identity of many emblems in churches with the Gnostic superstitions in their worst form grow stronger and stronger by multiplication of instances and though coin cidence might be credible in one it becomes infinitely improbable in so many One may here be mentioned though among the slightest re semblances The Gnostic emblems exhibit a peculiar form of cross T and this is common in the churches built by the Templars But the freemasons or that society of architects to whom we owe so many splendid churches do not escape M von Hammer's ill opinion better than the Templars Though he conceives them to be of earlier origin they had drunk at the same foul spring of impious and impure Gnos ticism It is rather amusing to compare the sympathy of our own modern ecclesiologists with those who raised the mediæval cathedrals their implicit confidence in the piety which ennobled the conceptions of these architects with the following passage in a memoir by M von Hammer "Sur deux Coffrets Gnostiques du moyen Age, du cabinet de M le duc de Blacas Paris 1832

Les architectes du moyen age inities dans tous les mysteres du Gnosticisme le plus deprave se plaisaient a en multiplier les symboles au dehors et au dedans de leurs eglises symboles dont le veritable sens n etait entendu que des adeptes et devaient rester voiles aux yeux des profanes Des figures scandaleuses semblables a celles des eglises de Montmorillon et de Bordeaux se retrouvent sur les eglises des Tem pl ers à Eger en Boheme à Schongrabern en Autriche a Fornuovi près de Parme et en d autres lieux, nommement le chien (canis aut gattus niger) sur les bas reliefs de l église gnostique d Erfurt (p 9) The Stadinghi heretics of the thirteenth century are charged in a bull of Gregory IX with exactly the same profaneness even including the black cat as the Templars of the next century This is said by von Hammer to be confirmed by sculptures (p 7)

The statutes of the Knights Templars were compiled in 1128 and as it is said by St Bernard They have been published in 1840 from manuscripts at Dijon Rome and Paris by M Maillard de Chambure Conservateur des Archives de Bourgogne

The title runs— Regles et Statuts secrets des Templiers" But as the French seems not so ancient as the above date they may, perhaps be a translation It will be easily supposed that they contain nothing but what is pious and austere The knights however in their inter course with the East fell rapidly into discredit for loose morals and *many vices* so that von Hammer rather invidiously begins his attack upon them by arguing the *d priori* probability of what he is about to allege Some have accordingly endeavored to steer a middle course and discrediting the charges brought generally against the order have admitted that both the vice and the irreligion were truly attributed to a great number But this is not at all the question and such a pre-tended compromise is nothing less than an acqu ttal The whole accu sations which destroyed the order of the Temple relate to its secret rites and to the mo le of in tiation If these were not stained by the most infamous turp tude the unhappy knights perished innocently and the guilt of their death lies at the door of I hil p the Fair

The novel evidence furnished by sculpture against the Templars has not been universally received It was early refuted, or attempted to be refuted by Raynouard and other French writers "Il est reconnu aujourd hui, meme en Allemagne," says M Chambure, editor of the Regles et Statuts secrets des Templiers, "que le pretendu culte baphometique n'est qu'une chimere de ce savant, fondee sur un erreur de numismatique et d architectonographie" (p 82) As I am not competent to form a decisive opinion I must leave this for the more deeply learned The proofs of M von Hammer are at least very striking, and it is not easy to see how they have been overcome But it is also necessary to read the answer of Raynouard in the "Journal des Savans" for 1819, who has been partially successful in repelling some of his opponent's arguments though it appeared to me that he had left much untouched It seems that the architectural evidence is the most positive, and can only be resisted by disproving its existence, or its connection with the Freemasons and Templars [1848]

Note XVI

I have followed the common practice of translating Jeanne d'Arc by Joan of Arc It has been taken for granted that Arc is the name of her birthplace Southey says,—

> She thought of Arc, and of the dingled brook
> Whose waves oft leaping in their craggy course
> Made dance the low hung w llow s dripping twigs,
> And where it spread into a glassy lake
> Of that old oak which on the smooth expanse
> Imaged its hoary mossy mantled boughs.

And in another place,—

> ——— her mind s eye
> Beheld Domrémy and the plains of Arc.

It does not appear, however, that any such place as Arc exists in that neighborhood, though there is a town of that name at a considerable distance Joan was as is known a native of the village of Domremy in Lorraine. The French writers all call her Jeanne d Arc, with the exception of one, M Michelet (vii 62) who spells her name Darc, which in a person of her birth seems more probable, though I cannot account for the uniform usage of an apostrophe and capital letter

I cannot pass Southey's Joan of Arc" without rendering homage to that early monument of his genius which perhaps, he rarely surpassed It is a noble epic never languid and seldom diffuse, full of generous enthusiasm, of magnificent inventions and with a well constructed fable, or rather selection of history Michelet who thinks the story of the Maid unfit for poetry had apparently never read Southey, but the author of an article in the "Biographie Universelle" says very well—'Le poeme de M Southey en Anglais intitule 'Joan of Arc' est la tentative la plus heureuse que les Muses aient faites jusqu'ici pour celebrer l heroine d Orleans C est encore une des singularites de son histoire de voir le genie de la poesie Anglaise inspirer de beaux vers en son honneur, tandis que celui de la poesie Française a ete jusqu ici rebelle à ceux qui ont voulu la chanter et n'a favorise que celui qui a outragé sa memoire" If however, the muse of France has done little justice to her memory it has been reserved for another Maid of Orleans as she has well been styled in a different art to fix the image of the first in our minds and to combine in forms only less enduring than those of poetry, the purity and inspiration with the unswerving heroism of the immortal Joan.

BOOK II.

THE FEUDAL SYSTEM.

CHOICE EXAMPLES OF EARLY PRINTING AND ENGRAVING

Fac-similes from Rare and Curious Books.


IMPERATOR
DIVVS MAXI
PIVS FELIX
CAESAR
MILIANVS
AVGVSTVS

BOOK II.

THE FEUDAL SYSTEM.

PART I

State of Ancient Germany—Effects of the Conquest of Gaul by the Franks—Tenures of Land—Distinction of Laws—Constitution of the Ancient Frank Monarchy—Gradual Establishment of Feudal Tenures —Principles of a Feudal Relation—Ceremonies of Homage and In vesture—Military Service—Feudal Incidents of Relief Aid, Ward ship, etc—Different Species of Fiefs—Feudal Law Books

Germany, in the age of Tacitus, was divided among a number of independent tribes, differing greatly in population and importance Their country, overspread with forests and morasses, afforded no large proportion of arable land Nor did they ever occupy the same land two years in succession, if what Cæsar tells us may be believed, that fresh allotments were annually made by the magistrates *a* But this could not have been an absolute abandonment of land once cultivated, which Horace ascribes to the migratory Scythians The Germans had fixed though not contiguous dwellings, and the inhabitants of the *gau* or township must have continued to till the same fields, though it might be with varying rights of separate property *b* They had kings elected out of particular families, and other chiefs, both for war and administration of justice, whom merit alone recommended to the public choice But the power of each was greatly limited and the decision of all leading questions though subject to the previous deliberation of the

chieftains, sprang from the free voice of a popular assembly [c] The principal men, however, of a German tribe fully partook of that estimation which is always the reward of valor and commonly of birth They were surrounded by a cluster of youths, the most gallant and ambitious of the nation, their pride at home, their protection in the field, whose ambition was flattered, or gratitude conciliated, by such presents as a leader of barbarians could confer These were the institutions of the people who overthrew the empire of Rome, congenial to the spirit of infant societies, and such as travellers have found among nations in the same stage of manners throughout the world And although, in the lapse of four centuries between the ages of Tacitus and Clovis, some change was wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken If the Salic laws were in the main drawn up before the occupation of Gaul by the Franks, as seems the better opinion it is manifest that lands were held by them in determinate several possession, and in other respects it is impossible that the manners described by Tacitus should not have undergone some alteration [d]

When these tribes from Germany and the neighboring countries poured down upon the empire, and began to form permanent settlements, they made a partition of the lands in the conquered provinces between themselves and the original possessors The Burgundians and Visigoths took two thirds of their respective conquests leaving the remainder to the Roman proprietor Each Burgundian was quartered, under the gentle name of guest, upon one of the former tenants, whose reluctant hospitality confined him to the smaller portion of his estate [e] The Vandals in Africa a more furious race of plunderers seized all the best lands [f] The Lombards of Italy took a third part of the produce We cannot discover any mention of a similar arrangement in the laws or history of

[c] De minoribus rebus principes consultant de majoribus omnes ita tamen ut ea quoque quorum penes plebem arbitrium est apud principes *pertractentur* Tac de Mor Germ c xi. Acidalius and Grotius contend for *pertractentur* which would be neater but the same sense appears to be conveyed by the common reading

[d] [Note I.]

[e] Leg Burgund c 54. 55. Sir F Palgrave has produced a passage from the Theodosian code vi 8 5 which illustrates this use of the word *hospes* It was given to the military quartered upon the inhabitants anywhere in the empire and thus transferred by analogy to the barbarian occupants. It was needless I should think for him to prove that these acquisitions better considered as allodial laws did not contain the germ of feudality There is no Gothic feudality unless the parties be connected by the mutual bond of vassalage and seigniory Eng Commonw i. 670.

[f] Procopius de Bello Vandal l. i. c 5

the Franks. It is, however, clear that they occupied, by public allotment of individual pillage, a great portion of the lands of France [g]

The estates possessed by the Franks as their property were termed *allodial;* a word which is sometimes restricted to such as had descended by inheritance [h] These were subject to no burden except that of public defence. They passed to all the children equally, or, in their failure, to the nearest kindred [i] But of these allodial possessions there was a particular species, denominated Salic, from which females were expressly excluded What these lands were, and what was the cause of the exclusion, has been much disputed No solution seems more probable than that the ancient lawgivers of the Salian Franks prohibited females from inheriting the lands assigned to the nation upon its conquest of Gaul, both in compliance with their ancient usages, and in order to secure the military service of every proprietor. But lands subsequently acquired by purchase or other means, though equally bound to the public defence, were relieved from the severity of this rule, and presumed not to belong to the class of Salic [j] Hence, in the

[g] [Note II.]

[h] Allodial lands are commonly opposed to beneficiary or feudal the former being strictly proprietary, while the latter depended upon a superior In this sense the word is of continual recurrence in ancient histories, laws and instruments It sometimes however, bears the sense of inheritance and this seems to be its meaning in the famous 62d chapter of the Salic law, de Alodis Alodium interdum opponitur comparato says Du Cange, in formulis veteribus Hence, in the charters of the eleventh century hereditary fiefs are frequently termed alodia Recueil des Historiens de France, t xi préface, Vaissette, Hist de Languedoc, t ii p 109

Alodium has by many been derived from *All* and *odh*, property (Du Cange et alii) But M Guizot with some positiveness brings it from *loos*, lot, thus confining the word to lands acquired by lot on the conquest But in the first place this assumes a regular partition to have been made by the Franks which he in another place as has been seen, does not acknowledge and secondly *Alodium* or in its earlier form *Alodis* is used for all hereditary lands (See Grimm, Deutsche Rechts Alterthumer p 492) In the Orkneys, where feudal tenures were not introduced the allodial proprietor is called an *udaller* thus lending probability to the former derivation of *alod* since it is only an inversion of the words *all* and *odh*, but it seems also to corroborate the notion of Luden, as it had been of Leibnitz that the word *adel* or *ethel*, applied to designate the nobler class of Germans had originally the same sense, it distinguished absolute or allodial property from that which, though belonging to freemen was subject to some conditions of dependency (Gesch des Deutschen Volkes, vol i. p. 719)

The word *sors*, which seems to have misled several writers when applied to land means only an integral patrimony, as it means capital opposed to interest when applied to money It is common in the civil law, and is no more than the Greek κλῆρος; but it had been peculiarly applied to the lands assigned by the Romans to the soldiery after a conquest, which some suppose I know not on what evidence, to have been by lot (Du Cange, voc. Sors) And hence this term was most probably adopted by the barbarians, or rather those who rendered their laws into Latin If the Teutonic word *loos* was sometimes used for a *mansus* or manor as M Guizot informs us it seems most probable that this was a literal translation of *sors*, bearing with it the secondary sense.

[i] Leg Salicæ c 62

[j] By the German customs, women, though treated with much respect and delicacy were not endowed at their marriage Dotem non uxor marito, sed maritus uxori confert Tacitus c 18 A similar principle might debar them of inheritance in fixed possessions Certain it is that the exclusion of fe-

hundred solidi for an Antrustion of the king; at three hundred for a Roman *conviva regis* (meaning a man of sufficient rank to be admitted to the royal table);[p] at two hundred for a common Frank, at one hundred for a Roman possessor of lands; and at forty-five for a tributary, or cultivator of another's property In Burgundy, where religion and length of settlement had introduced different ideas, murder was punished with death But other personal injuries were compensated, as among the Franks, by a fine, graduated according to the rank and nation of the aggrieved party[q]

The barbarous conquerors of Gaul and Italy were guided by notions very different from those of Rome, who had imposed her own laws upon all the subjects of her empire Adhering in general to their ancient customs, without desire of improvement, they left the former inhabitants in unmolested enjoyment of their civil institutions The Frank was judged by the Salic or the Ripuary code, the Gaul followed that of Theodosius[r] This grand distinction of Roman and barbarian, according to the law which each followed, was common to the Frank, Burgundian, and Lombard kingdoms But the Ostrogoths, whose settlement in the empire and advance in civility of manners were earlier, inclined to desert their old usages, and adopt the Roman jurisprudence[s] The laws of the Visigoths, too, were compiled by bishops upon a Roman foundation, and designed as an uniform code, by which both nations should be governed[t] The name of Gaul or Roman was not

[p] This phrase was borrowed from the Romans The Theodosian code speaks of those qui divinis epulis adhibentur et adorandi principes facultatem antiquitus meruerunt Garnier, Origine du Gouvernement français (in Leber's Collection des Meilleures Dissertations relatives à l'Histoire de France 1838 vol v p 187) This memoir by Garnier which obtained a prize from the Academy of Inscriptions in 1761 is a learned disquisition on the relation between the Frank monarchy and the usages of the Roman empire inclining considerably to the school of Dubos I only read it in 1851 it puts some things in a just light, yet the impression which it leaves is that of one-sidedness. The author does not account for the continued distinction between the Franks and Romans testified by the language of history and of law Garnier never once alludes to the most striking circumstance, the inequality of composition for homicide

To return to the words conviva regis, it seems not probable that they should be limited to those who actually had feasted at the royal table they naturally include the senatorial families one of whom would receive that honor if he should present himself at court

[q] Leges Salicæ c 43, Leges Burgundionum tit 2 Murder and robbery were made capital by Childebert King of Paris but *Francus* was to be sent for trial in the royal court *debilior persona in loco pendatur* Baluz t 1 p 17 I am inclined to think that the word *Francus* does not absolutely refer to the nation of the party but rather to his rank as opposed to *debilior persona* and consequently that it had already acquired the sense of freeman or freeborn (ingenuus) which is perhaps its strict meaning Du Cange voc Francus quotes the passage in this sense. [Note IV.]

[r] Inter Romanos negotia causarum Romanis Legibus præcipimus terminari Edict Clotar 1 circ. 560. Baluz. Capitul t 1 p 7

[s] Giannone l iii c 2

[t] Hist. de Languedoc, t i. p 242. Heineccius Hist Juris German. c 1 § 15

entirely lost in that of Frenchman, nor had the separation of their laws ceased, even in the provinces north of the Loire, till after the time of Charlemagne[u] Ultimately, however, the feudal customs of succession, which depended upon principles quite remote from those of the civil law, and the rights of territorial justice which the barons came to possess, contributed to extirpate the Roman jurisprudence in that part of France But in the south, from whatever cause, it survived the revolutions of the middle ages, and thus arose a leading division of that kingdom into *pays coutumiers* and *pays du droit ecrit*, the former regulated by a vast variety of ancient usages, the latter by the civil law[t]

The kingdom of Clovis was divided into a number of districts, each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans[w] The authority of this officer extended over all the inhabitants, as well Franks as natives It was his duty to administer justice, to preserve tranquillity, to collect the royal revenues, and to lead, when required, the free proprietors into the field[x] The title of a duke implied a higher dignity, and commonly gave authority over several counties[y] These offices

[u] Suger in his Life of Louis VI, uses the expression lex Salica (Recueil des Historiens, t xii. p 4) and I have some recollection of having met with the like words in other writings of as modern a date But I am not convinced that the original Salic code was meant by this phrase which may have been applied to the local feudal customs. The capitularies of Charlemagne are frequently termed lex Salica. Many of these are copied from the Theodosian code.

[t] This division is very ancient being found in the edict of Pistes, under Charles the Bald in 864 where we read in illis regionibus quæ legem Romanam sequuntur (Recueil des Historiens, t vi p 664) Montesquieu thinks that the Roman law fell into disuse in the north of France on account of the superior advantages, particularly in point of composition for offences, annexed to the Salic law while that of the Visigoths being more equal the Romans under their government had no inducement to quit their own code (Esprit des Loix l xxviii c. 4.) But it does not appear that the Visigoths had any peculiar code of laws till after their expulsion from the kingdom of Toulouse They then retained only a small strip of territory in France about Narbonne and Montpelier

However the distinction of men according to their laws was preserved for many centuries both in France and Italy A judicial proceeding of the year 918, published by the historians of Languedoc (t ii Append x, p 56) proves that the Roman Gothic and Salic codes were then kept perfectly separate, and that there were distinct judges for the three nations. The Gothic law is referred to as an existing authority in a charter of 1070. Idem t. ii p 274 De Marca Marca Hispanica p 1159. Women in Italy upon marriage usually changed their law and adopted that of their husband returning to their own in widowhood but to this there are exceptions Charters are found as late as the twelfth century with the expression, qui professus sum lege Longobardicâ [aut] lege Salica [aut] lege Alemannorum vivere But soon afterwards the distinctions were entirely lost partly through the prevalence of the Roman law and partly through the multitude of local statutes in the Italian cities. Muratori Antiquitates Italiæ Dissertat 22 Du Cange v Lex Heineccius Historia Juris Germanici c. ii s. 51 [Note V]

[w] The word *graf* was not always equivalent to *comes*, it took in some countries as in England the form *gerefa* and stood for the vicecomes or sheriff the count or alderman's deputy Some have derived it from *graw* on the hypothesis that the elders presided in the German assemblies

[x] Marculfi Formulæ, l. i. 32.

[y] Houard the learned translator of

vessel without marking any resentment, but found an opportunity, next year, of revenging himself by the death of the soldier The whole behavior of Clovis appears to be that of a barbarian chief, not daring to withdraw anything from the rapacity, or to chastise the rudeness, of his followers

But if such was the liberty of the Franks when they first became conquerors of Gaul, we have good reason to believe that they did not long preserve it A people not very numerous spread over the spacious provinces of Gaul, wherever lands were assigned to or seized by them It became a burden to attend those general assemblies of the nation which were annually convened in the month of March, to deliberate upon public business, as well as to exhibit a muster of military strength After some time it appears that these meetings drew together only the bishops, and those invested with civil offices [c] The ancient inhabitants of Gaul, having little notion of political liberty, were unlikely to resist the most tyrannical conduct Many of them became officers of state, and advisers of the sovereign, whose ingenuity might teach maxims of despotism unknown in the forests of Germany We shall scarcely wrong the bishops by suspecting them of more pliable courtliness than was natural to the long-haired warriors of Clovis [d] Yet it is probable that some of the Franks were themselves instrumental in this change of their government The court of the Merovingian kings was crowded with followers, who have been plausibly derived from those of the German chiefs described by Tacitus, men forming a distinct and elevated class in the state and known by the titles of Fideles, Leudes, and Antrustiones They took an oath of fidelity to the king, upon their admission into that rank and were commonly remunerated with gifts of land Under different appellations we find as some antiquaries think this class of courtiers in the early records of Lombardy and England The general name of Vassals (from *Guas* a Celtic word for a servant) is applied to them in every country [e] By the assistance of these

[c] Dubos t p 327 Mably Observ sur l H sto re de France l 1 c 3

[d] Gregory of Tours throughout h s h story ta ks of the royal power n the tone of Lou s XIV s court If we were obl ged to bel eve all we read even the vase of Soissons would bear w tness to the obed ence of the Franks

[e] The Gas ndi of Italy and the Anglo-Saxon royal Thane appear to corre spond more or less to the Antrust ons of France The word Thane however as w l be seen n another chapter was used n a very extens ve sense and comprehended all free propr etors of land That of *Leudes* seems to imply only subject on and is frequently ap pl ed to the whole body of a nat on

faithful supporters, it has been thought that the regal authority of Clovis's successors was insured.[f] However this may be, the annals of his more immediate descendants exhibit a course of oppression, not merely displayed, as will often happen among uncivilized people, though free, in acts of private injustice, but in such general tyranny as is incompatible with the existence of any real checks upon the sovereign.[g]

But before the middle of the seventh century the kings of this line had fallen into that contemptible state which has been described in the preceding book. The mayors of the palace, who from mere officers of the court had now become masters of the kingdom, were elected by the Franks, not indeed the whole body of that nation, but the provincial governors and considerable proprietors of land.[h] Some inequality there probably existed from the beginning in the partition of estates, and this had been greatly increased by the common changes of property, by the rapine of those savage times, and by royal munificence. Thus arose that landed aristocracy which became the most striking feature in the political system of Europe, during many centuries, and is, in fact, its great distinction, both from the despotism of Asia and the equality of republican governments.

There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better

as well as, in a stricter sense, to the king's personal vassals This name they did not acquire, originally, by possessing benefices, but rather, by being vassals or servants, became the object of beneficiary donations In one of Marculfus's precedents, l i f 18, we have the form by which an Antrustion was created See Du Cange under these several words, and Muratori's thirteenth dissertation on Italian Antiquities. The Gardingi sometimes mentioned in the laws of the Visigoths do not appear to be of the same description

[f] Boantus . . . vallatus in domo sua ab hominibus regis interfectus est Greg Tur l viii c 11 A few spirited retainers were sufficient to execute the mandates of arbitrary power among a barbarous, disunited people

[g] This is more fully discussed in Note VII

[h] The revolution which ruined Brunehaut was brought about by the defection of her chief nobles especially Warnachar, mayor of Austrasia Upon Clotaire II 's victory over her he was compelled to reward these adherents at the expense of the monarchy Warnachar was made mayor of Burgundy, with an oath from the king never to dispossess him (Fredegarius, c 42) In 626 the nobility of Burgundy declined to elect a mayor, which seems to have been considered as their right From this time nothing was done without the consent of the aristocracy Unless we ascribe all to the different ways of thinking in Gregory and Fredegarius, the one a Roman bishop the other a Frank or Burgundian, the government was altogether changed

It might even be surmised that the crown was considered as more elective than before The author of Gesta Regum Francorum, an old chronicler who lived in those times, changes his form of expressing a king's accession from that of Clotaire II Of the earlier kings he says only, regnum recepit But of Clotaire, Franci quoque prædictum Clotarium regem parvulum supra se in regnum statuerunt Again, of the accession of Dagobert I Austrasii Franci superiores, congregati in unum, Dagobertum supra se in regnum statuunt In another place Decedente præfato rege Clodoveo, Franci Clotarium seniorem puerum ex tribus sibi regem statuerunt Several other instances might be quoted

understood, by fixing our conception of the term In our modern acceptation it is usually taken to imply certain distinctive privileges in the political order, inherent in the blood of the possessor, and consequently not transferable like those which property confers Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul till long after the downfall of the Roman empire They felt, no doubt, the common prejudice of mankind in favor of those whose ancestry is conspicuous, when compared with persons of obscure birth This is the primary meaning of nobility, and perfectly distinguishable from the possession of exclusive civil rights Those who are acquainted with the constitution of the Roman republic will recollect an instance of the difference between these two species of hereditary distinction, in the *patricii* and the *nobiles* Though I do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations (else the beginnings of the greatest houses would not have been so enveloped in doubt as we find them), there are abundant traces of the respect in which families of known antiquity were held among them [1]

But the essential distinction of ranks in France, perhaps also in Spain and Lombardy, was founded upon the possession of land, or upon civil employment The aristocracy of wealth preceded that of birth which indeed is still chiefly dependent upon the other for its importance A Frank of large estate was styled a noble, if he wasted or was despoiled of his wealth his descendants fell into the mass of the people and the new possessor became noble in his stead Families were noble by descent, because they were rich by the same means Wealth gave them power, and power gave them pre eminence But no distinction was made by the Salic or Lombard codes in the composition for homicide, the great test of political station except in favor of the king s vassals It seems however by some of the barbaric codes those namely of the Burgundians,

[1] The antiquity of French nobility is maintained temperately by Schmidt, Hist. des Allemands, t. i. p. 3, and with set money by Montesquieu, l. xxx. c. 25. Neither of them proves any more than I have admitted. The expression of Ludovicus Pius to a freedman, Rex fecit te liberum, non nobilem quod impossibile est postea facere, is very true, and without making a proper regard was paid to birth, indeed there are many proofs. It seems to have been a recommendation in the choice of bishops (Marculf. formul. i. 5. cum nobilitate ingenii in Baluz. Capitular. tom.) It was probably much considered in conferring dignities. Pretextatus says of Prothadius mayor of the palace to Frunehaut, Quoscumque genere nobiles reperebat totos humiles arcebat, ut nullus reperiretur qui gratiam, quem ipse operabat potius sibi assumeret. [Note VIII.]

military attendance After the peace of Coblentz, in 860, Charles the Bald restored all allodial property belonging to his subjects who had taken part against him, but not his own beneficiary grants, which they were considered as having forfeited

Most of those who have written upon the feudal system lay it down that benefices were originally precarious and revoked at pleasure by the sovereign, that they were afterwards granted for life, and at a subsequent period became hereditary No satisfactory proof however, appears to have been brought of the first stage in this progress *m* At least, I am not convinced that beneficiary grants were ever considered as resumable at pleasure, unless where some delinquency could be imputed to the vassal It is possible though I am not aware of any documents which prove it that benefices may in some instances have been granted for a term of years since even fiefs in much later times were occasionally of no greater extent Their ordinary duration however was at least the life of the possessor after which they reverted to the fisc *n* Nor can I agree with those who deny the existence of hereditary benefices under the first race of French kings The codes of the Burgundians and of the Visigoths which advert to them are by analogy witnesses to the contrary *o* The precedents given in the forms of Marculfus (about 660) for the grant of a benefice contain very full terms extending it to the heirs of the beneficiary *p* And Mably has plausibly inferred the perpetuity of benefices, at least in some instances from the language of the treaty at Andely in 587 and of an edict of Clotaire II some years later *q*

m [Note IX]

n The following passage from Gregory of Tours seems to prove that although sons were occasionally permitted to succeed their fathers an indulgence which easily grew up into a right the crown had in his time an unquestionable reversion after the death of its original beneficiary Hoc tempore et Wandelinus nutritor Childeberti regis obiit sed in locum ejus nullus est subrogatus eo quod regina mater curam vel tuitionem propriam habere de filio *Quæ usque dum de fisco merui fisci juribus sunt relata* Obiit hic dum debus Bodegesilus dux plenus dierum sed nihil de facultate ejus filius meus unum est Lib v c 22. Gregory's work however does not go farther than 595.

o Leges Burgundiorum tit. i Leges Visigoth l. v. t. t 2.

p Marculf. form x and xiv l. i This precedent was in use down to the eleventh century its expressions recur in almost every charter The earliest instance I have seen of an actual grant to a private person is of Charlemagne to one John in 795 Baluz Capitularia t. p. 1400

q Quicquid antefati reges ecclesiis aut fidelibus suis contulerunt aut adhuc conferre cum justitia Deo propitiante voluerint stabiliter conservetur et quicquid unicuique fideli um in ullo rus que regno per legem et justitiam redhibetur nullum ei prejudicium ponatur sed liceat res debitas possidere atque recipere Et si aliquid unicuique per interregna sine culpa sublatum est, auden tia habita restauretur Et de eo quod per munificentias præcedentium regum unusquisque usque ad transitum gloriosæ memoriæ domini Chlothachar i regis possederit cum securitate possideat; et quod exinde fidelibus personis ablatum est de præsenti recipiat. Fœdus Andelaacum in Gregor Turon. l. iv c 20.

Quæcunque ecclesiæ vel cheriæ vel quibus bet personis a gloriosæ me-

We can hardly doubt at least that children would put in a very strong claim to what their father had enjoyed; and the weakness of the crown in the seventh century must have rendered it difficult to reclaim its property

A natural consequence of hereditary benefices was that those who possessed them carved out portions to be held of themselves by a similar tenure Abundant proofs of this custom, best known by the name of subinfeudation, occur even in the capitularies of Pepin and Charlemagne At a later period it became universal, and what had begun perhaps through ambition or pride was at last dictated by necessity In that dissolution of all law which ensued after the death of Charlemagne, the powerful leaders, constantly engaged in domestic warfare, placed their chief dependency upon men whom they attached by gratitude, and bound by strong conditions The oath of fidelity which they had taken, the homage which they had paid to the sovereign, they exacted from their own vassals To render military service became the essential obligation which the tenant of a benefice undertook, and out of those ancient grants, now become for the most part hereditary, there grew up in the tenth century, both in name and reality, the system of feudal tenures[r]

This revolution was accompanied by another still more important The provincial governors, the dukes and counts, to whom we may add the marquises or margraves intrusted with the custody of the frontiers, had taken the lead in all public measures after the decline of the Merovingian kings Charlemagne, duly jealous of their ascendency, checked it by suffering the duchies to expire without renewal, by granting very few counties hereditarily, by removing the administration of justice from the hands of the counts into those of his own itinerant judges, and, if we are not deceived in his policy, by elevating the ecclesiastical order as a counterpoise to that of the nobility Even in his time the faults of the counts are the constant theme of the capitularies, their dissipation and neglect of duty, their oppression of the poorer proprietors, and their artful attempts to appropriate the crown lands situated within their territory[s] If Charlemagne was unable to redress those

moniæ præfatis principibus munificentiæ largitate collatæ sunt omni firmitate perdurent Edict Chlotachar I vel potius II in Recueil des Historiens t iv p 116.

[r] [Note X]

[s] Capitularia Car Mag et Lud Pii passim Schmidt Hist des Allemands t ii p 158 Gaillard Vie de Charlem t ii p 118

evils, how much must they have increased under his posterity! That great prince seldom gave more than one county to the same person, and as they were generally of moderate size, co extensive with episcopal dioceses, there was less danger, if this policy had been followed, of their becoming independent[t] But Louis the Debonair, and, in a still greater degree, Charles the Bald, allowed several counties to be enjoyed by the same person The possessors constantly aimed at acquiring private estates within the limits of their charge, and thus both rendered themselves formidable, and assumed a kind of patrimonial right to their dignities By a capitulary of Charles the Bald, A D 877, the succession of a son to the father's county appears to be recognized as a known usage[u] In the next century there followed an entire prostration of the royal authority, and the counts usurped their governments as little sovereignties, with the domains and all regalian rights, subject only to the feudal superiority of the king[v] They now added the name of the county to their own, and their wives took the appellation of countess[w] In Italy the independence of the dukes was still more complete, and although Otho the Great and his descendants kept a stricter rein over those of Germany, yet we find the great fiefs of their empire, throughout the tenth century, granted almost invariably to the male and even female heirs of the last possessor

Meanwhile the allodial proprietors, who had hitherto formed the strength of the state fell into a much worse condition They were exposed to the rapacity of the counts who, whether as magistrates and governors or as overbearing lords, had it always in their power to harass them Every district was exposed to continual hostilities sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which, in the tenth century under pretense of resisting the Normans and Hungarians served the purposes of private war Against such a system of rapine the military compact of lord

[t] Vassette Hist de Languedoc t i pp 587 700, and not 87

[u] Baluzi Capitularia t ii pp 263 269. This is a questionable point and most French antiquaries consider this famous capitulary as the foundation of an hereditary right in counties. I am inclined to think that there was at least a practice of succession which is implied and guaranteed by this provision. [Note VI]

[v] It appears by the record of a process in 918, that the Counts of Toulouse had already so far usurped the rights of the sovereign as to claim an estate on the ground of its being a royal benefice Hist de Languedoc, t ii Appen p 56.

[w] Vassette Hist de Languedoc t i p 588 and infrà t ii pp 38, 109, and Appendix p. 56.

and vassal was the only effectual shield, its essence was the reciprocity of service and protection But an insulated allodialist had no support, his fortunes were strangely changed since he claimed, at least in right, a share in the legislation of his country, and could compare with pride his patrimonial fields with the temporary benefices of the crown Without law to redress his injuries, without the royal power to support his right, he had no course left but to compromise with oppression, and subject himself, in return for protection, to a feudal lord During the tenth and eleventh centuries it appears that allodial lands in France had chiefly become feudal that is, they had been surrendered by their proprietors and received back again upon the feudal conditions, or more frequently, perhaps the owner had been compelled to acknowledge himself the man or vassal of a suzerain and thus to confess an original grant which had never existed [x] Changes of the same nature, though not perhaps so extensive, or so distinctly to be traced, took place in Italy and Germany Yet it would be inaccurate to assert that the prevalence of the feudal system has been unlimited, in a great part of France allodial tenures always subsisted, and many estates in the empire were of the same description.[y]

There are, however, vestiges of a very universal custom distinguishable from the feudal tenure of land though so analogous to it that it seems to have nearly escaped the notice of antiquaries From this silence of other writers, and the great obscurity of the subject I am almost afraid to notice what several passages in ancient laws and instruments concur to

[x] Hist de Languedoc, t i p 109. It must be confessed that there do not occur so many specific instances of this conversion of allodial tenure into feudal as might be expected in order to warrant the supposition in the text. Several records however are quoted by Robertson Hist. Charles V note 8 and others may be found in diplomatic collections. A precedent for surrendering allodial property to the king and receiving it back as his benefice appears even in Marculfus l. i. form 13 The county of Comminges between the Pyrenees Toulouse, and Bigorre was allodial till 1444 when it was put under the feudal protection of the Count of Toulouse It devolved by escheat to the crown in 1443. Villaret t. xv p 346.

In many early charters the king confirms the possession even of allodial property for greater security in lawless times and on the other hand in those of the tenth and eleventh centuries the word allodium is continually used for a feud or hereditary benefice which renders this subject still more obscure.

[y] The maxim Nulle terre sans seigneur was so far from being universally received in France that in almost all southern provinces or pays du droit ecrit lands were presumed to be allodial unless the contrary was shown or as it was called francaleux sans titre The parliaments however seem latterly to have inclined against this presumption and have thrown the burden of proof on the party claiming allodiality For this see Denisart Dictionnaire des Decisions, art Franc-aleu. [Note XI.]

In Germany according to Du Cange voc Baro there was a distinction between Barones and Semper Barones the latter holding their lands allodially

prove, that, besides the relation established between lord and vassal by beneficiary grants, there was another species more personal, and more closely resembling that of patron and client in the Roman republic. This was usually called commendation; and appears to have been founded on two very general principles, both of which the distracted state of society inculcated. The weak needed the protection of the powerful; and the government needed some security for public order. Even before the invasion of the Franks, Salvian, a writer of the fifth century, mentions the custom of obtaining the protection of the great by money, and blames their rapacity, though he allows the natural reasonableness of the practice [a]. The disadvantageous condition of the less powerful freemen, which ended in the servitude of one part, and in the feudal vassalage of another, led such as fortunately still preserved their allodial property to insure its defence by a stipulated payment of money. Such payments, called Salvamenta, may be traced in extant charters, chiefly indeed of monasteries [a]. In the case of private persons it may be presumed that this voluntary contract was frequently changed by the stronger party into a perfect feudal dependence. From this, however, as I imagine, it probably differed, in being capable of dissolution at the inferior's pleasure, without incurring a forfeiture, as well as in having no relation to land. Homage, however, seems to have been incident to commendation, as well as to vassalage. Military service was sometimes the condition of this engagement. It was the law of France, so late at least as the commencement of the third race of kings, that no man could take a part in private wars, except in defence of his own lord. This we learn from an historian about the end of the tenth century, who relates that one Erminfrid, having been released from his homage to Count Burchard, on ceding the fief he had held of him to a monastery, renewed the ceremony on a war breaking out between Burchard and another nobleman, wherein he was desirous to give assistance; since, the author observes, it is not, nor has been, the practice in France, for any man to be concerned in war, except in the presence or by the command of his lord [b]. Indeed, there is reason to infer, from the capitularies of Charles the Bald, that every man was bound to attach himself to some

[a] Du Cange, v. Salvamentum.
[a] Ibid.
[b] Recueil des Historiens, tome x. p. 355.

lord, though it was the privilege of a freeman to choose his own superior.[c] And this is strongly supported by the analogy of our Anglo-Saxon laws, where it is frequently repeated that no man should continue without a lord. There are, too, as it seems to me, a great number of passages in Domesday-book which confirm this distinction between personal commendation and the beneficiary tenure of land. Perhaps I may be thought to dwell too prolixly on this obscure custom; but as it tends to illustrate those mutual relations of lord and vassal which supplied the place of regular government in the polity of Europe, and has seldom or never been explicitly noticed, its introduction seemed not improper.

It has been sometimes said that feuds were first rendered hereditary in Germany by Conrad II, surnamed the Salic. This opinion is perhaps erroneous. But there is a famous edict of that emperor at Milan, in the year 1037 (which, though immediately relating only to Lombardy, marks the full maturity of the system, and the last stage of its progress[d] I have remarked already the custom of subinfeudation, or grants of lands by vassals to be held of themselves, which had grown up with the growth of these tenures. There had occurred, however, some disagreement, for want of settled usage, between these inferior vassals and their immediate lords, which this edict was expressly designed to remove. Four regulations of great importance are established therein: that no man should

[c] Unusquisque liber homo post mortem domini sui, licentiam habeat se commendandi inter hæc tria regna ad quemcunque voluerit. Similiter et ille qui nondum alicui commendatus est Baluzii Capitularia, t. i. p. 443. A.D. 806. Volumus etiam ut unusquisque liber homo in nostro regno seniorem qualem voluerit in nobis et in nostris fidelibus recipiat. Capit. Car. Calvi, A.D. 877. Et volumus ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel alius suis utilitatibus pergat. Ibid. See too Baluze, t. i. p. 536, 537.

By the Establishments of St. Louis, c. 87, every stranger coming to settle within a barony was to acknowledge the baron as lord within a year and a day, or pay a fine. In some places he even became the serf or villein of the lord. Ordonnances des Rois, p. 187. Upon this jealousy of unknown settlers which pervades the policy of the middle ages was founded the droit d'aubaine, or right to their movables after their decease. See preface to Ordonnances des Rois, t. i. p. 15.

The article Commendatio in Du Cange's Glossary furnishes some hints upon this subject, which, however, that author does not seem to have fully apprehended. Carpentier, in his Supplement to the Glossary, under the word Vassaticum gives the clearest notice of it that I have anywhere found. Since writing the above pages I have found the subject touched by M. de Montlosier, Hist. de la Monarchie Française, t. i. p. 84. [Note XI.]

[d] Spelman tells us, in his Treatise of Feuds, chap. ii., that Conradus Salicus, a French emperor but of German descent [what can this mean?], went to Rome about 915 to fetch his crown from Pope John X., when, according to him, the succession of a son to his father's fief was first conceded. An almost unparalleled blunder in so learned a writer.

Conrad the Salic was elected at Worms in 1024, crowned at Rome by John XIX. in 1027, and made this edict at Milan in 1037.

The ceremonies used in conferring a fief were principally three—homage, fealty, and investiture. 1. The first was designed as a significant expression of the submission and devotedness of the vassal towards his lord. In performing homage, his head was uncovered, his belt ungirt, his sword and spurs removed; he placed his hands, kneeling, between those of the lord, and promised to become his man from thenceforward; to serve him with life and limb and worldly honor, faithfully and loyally, in consideration of the lands which he held under him. None but the lord in person could accept homage, which was commonly concluded by a kiss[n] 2. An oath of fealty was indispensable in every fief; but the ceremony was less peculiar than that of homage, and it might be received by proxy. It was taken by ecclesiastics, but not by minors; and in language differed little from the form of homage.[o] 3 Investiture, or the actual conveyance of feudal lands, was of two kinds, proper and improper. The first was an actual putting in possession upon the ground, either by the lord or his deputy; which is called, in our law, livery of seisin. The second was symbolical, and consisted in the delivery of a turf, a stone, a wand, a branch, or whatever else might have been made usual by the caprice of local custom. Du Cange enumerates not less than ninety-eight varieties of investitures.[p]

Upon investiture, the duties of the vassal commenced. These it is impossible to define or enumerate; because the services of military tenure, which is chiefly to be considered, were in their nature uncertain, and distinguished as such from those incident to feuds of an inferior description. It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honor of his family.[q]

vassal to renounce his homage before he made war on his lord, if he would avoid the shame and penalty of feudal treason. After a reconciliation the homage was renewed. And in this no distinction was made between the king and another superior. Thus Henry II did homage to the King of France in 1188, having renounced his former obligation to him at the commencement of the preceding war. Mat. Paris p. 136.

n Du Cange, Hominium, and Carpentier's Supplement, ii. voc. Littleton s. 85. Assises de Jérusalem, c. 204. Crag. l. i. tit. 11; Recueil des Historiens, t. iii. préface, p. 174. Homagium per paragium was unaccompanied by any feudal obligation, and distinguished from homagium ligeum which carried with it an obligation of fidelity. The dukes of Normandy rendered only homage per paragium to the kings of France, and received the like from the dukes of Brittany. In liege homage it was usual to make reservations of allegiance to the king, or any other lord whom the homager had previously acknowledged.

o Littl. s. 91; Du Cange, voc. Fidelitas.

p Du Cange, voc. Investitura.

q Assises de Jérusalem, c. 205. Homme ne doit à la feme de son seigneur, ne à sa fille requerre vilainie de son cors, ne

In battle he was bound to lend his horse to his lord, when dismounted; to adhere to his side, while fighting; and to go into captivity as a hostage for him, when taken. His attendance was due to the lord's courts, sometimes to witness, and sometimes to bear a part in, the administration of justice.[r]

The measure, however, of military service was generally settled by some usage. Forty days was the usual term during which the tenant of a knight's fee was bound to be in the field at his own expense.[s] This was extended by St. Louis to sixty days, except when the charter of infeudation expressed a shorter period. But the length of service diminished with the quantity of land. For half a knight's fee but twenty days were due; for an eighth part, but five; and when this was commuted for an escuage or pecuniary assessment, the same proportion was observed.[t] Men turned of sixty, public magis-

à sa sœur *tant com elle est demoiselle en son hostel.* I mention this part of feudal duty on account of the light it throws on the statute of treasons, 25 E. III. One of the treasons therein specified is, si omne violast la compaigne le roy *ou la compaigne leigné fuz le roy ainsi marié* ou la compaigne leigné fitz et heire le roy. Those who, like Sir E. Coke and the modern lawyers in general, explain this provision by the political danger of confusing the royal blood do not apprehend its spirit. It would be absurd, upon such grounds, to render the violation of the king's eldest daughter treasonable, so long only as she remains unmarried, when as is obvious the danger of a spurious issue inheriting could not arise. I consider this provision therefore as entirely founded upon the feudal principles which make it a breach of faith (that is, in the primary sense of the word, a treason) to sully the honor of the lord in that of the near relations who were immediately protected by residence in his house. If it is asked why this should be restricted by the statute to the person of the eldest daughter, I can only answer that this which is not more reasonable according to the common political interpretation, is analogous to many feudal customs in our own and other countries which attribute a sort of superiority in dignity to the eldest daughter.

It may be objected that in the reign of Edward III. there was little left of the feudal principle in any part of Europe, and least of all in England. But the statute of treasons is a declaration of the ancient law and comprehends undoubtedly what the judges who drew it could find in records now perished or in legal traditions of remote antiquity.

Similar causes of forfeiture are enumerated in the Libri Feudorum, l. i. tit. 5, and l. ii. tit. 24. In the Establishments of St. Louis, c. 51, 52, it is said that a lord seducing his vassal's daughter intrusted to his custody lost his seigniory, a vassal guilty of the same crime towards the family of his suzerain forfeited his land. A proof of the tendency which the feudal law had to purify public morals and to create that sense of indignation and resentment with which we now regard such breaches of honor.

[r] Assises de Jérusalem, c. 222. A vassal, at least in many places was bound to reside upon his fief or not to quit it without the lord's consent. Du Cange, voc. Reseantia, Remanentia, Recueil des Historiens, t. xi. préface, p. 172.

[s] In the kingdom of Jerusalem feudal service extended to a year. Assises de Jérusalem, c. 230. It is obvious that this was founded on the peculiar circumstances of that state. Service of castle guard which was common in the north of England was performed without limitation of time. Lyttelton's Henry II., vol. ii. p. 184.

[t] Du Cange, voc. Feudum militis, Membrum Loricæ. Stuart's View of Society, p. 382. This division by knight's fees is perfectly familiar in the feudal law of England. But I must confess my inability to adduce decisive evidence of it in that of France, with the usual exception of Normandy. According to the natural principle of fiefs, it might seem that the same personal service would be required from the tenant whatever were the extent of his land. William the Conqueror it is said distributed this kingdom into about 60,000 parcels of nearly equal value from each of which the service of a soldier was due. He may possibly have been the inventor of this politic arrangement. Some rule must, however have been observed in all countries in fixing the amercement for absence, which could only be equitable if

the greatest abuses of the feudal policy. Henry I. of England promises in his charter that they shall in future be just and reasonable; but the rate does not appear to have been finally settled till it was laid down in Magna Charta at about a fourth of the annual value of the fief. We find also fixed reliefs among the old customs of Normandy and Beauvoisis. By a law of St. Louis, in 1245,[a] the lord was entitled to enter upon the lands, if the heir could not pay the relief, and possess them for a year. This right existed unconditionally in England under the name of primer seisin, but was confined to the king[b]

Closely connected with reliefs were the fines paid to the lord upon the alienation of his vassal's feud; and indeed we frequently find them called by the same name. The spirit of feudal tenure established so intimate a connection between the two parties that it could be dissolved by neither without requiring the other's consent. If the lord transferred his seigniory, the tenant was to testify his concurrence; and this ceremony was long kept up in England under the name of attornment. The assent of the lord to his vassal's alienation was still more essential, and more difficult to be attained. He had received his fief, it was supposed, for reasons peculiar to himself, or to his family; at least his heart and arm were bound to his superior; and his service was not to be exchanged for that of a stranger, who might be unable or unwilling to render it. A law of Lothaire II. in Italy forbids the alienation of fiefs without the lord's consent.[c] This prohibition is repeated in one of Frederic I, and a similar enactment was made by Roger, King of Sicily[d] By the law of France the lord was entitled, upon every alienation made by his tenant, either to redeem the fief by paying the purchase-money, or to claim a certain part of the value, by way of fine, upon the change of tenancy[e] In England even the practice of subinfeudation,

a Ordonnances des Rois, p 55

b Du Cange, v Placitum, Relevium, Sporla By many customs a relief was due on every change of the lord, as well as of the vassal but this was not the case in England Beaumont speaks of reliefs as due only on collateral succession Coutumes de Beauvoisis c 27 And this, according to Du Cange, was the general rule in the customary law of France. In Anjou and Maine they were not even due upon succession between brothers. Ordonnances des Rois, t. i. p. 58. And M de Pastoret, in his valuable preface to the sixteenth volume of that collection, says it was a rule that the king had nothing upon lineal succession of a fief, whether in the ascending or descending line, but *la bouche et les mains*, s *e*, homage and fealty p 20.

c Lib. Feudorum I ii tit 9 and 52 This was principally levelled at the practice of alienating feudal property in favor of the church, which was called pro animâ judicare Radevicus in Gestis Frederic I I iv c 7. Lib Feud I i. tit 7, 16. I. ii. tit. 10.

d Giannone, I. ii. c 5

e Du Cange, v Reaccapitum Placitum Rachatum Pastoret, préface au sextième tome des Ordonnances, p. 203

which was more conformable to the law of fiefs and the military genius of the system, but injurious to the suzerains, who lost thereby their escheats and other advantages of seigniory, was checked by Magna Charta,[f] and forbidden by the statute 18 Edward I., called Quia Emptores, which at the same time gave the liberty of alienating lands, to be holden to the grantor's immediate lord. The tenants of the crown were not included in this act; but that of 1 Edward III. c. 12, enabled them to alienate, upon the payment of a composition into chancery, which was fixed at one-third of the annual value of the lands.[g]

These restraints, placed for the lord's advantage upon the transfer of feudal property, are not to be confounded with those designed for the protection of heirs and preservation of families. Such were the *jus protimeseos* in the books of the fiefs,[h] and *retrait lignager* of the French law, which gave to the relations of the vendor a preëmption upon the sale of any fief, and a right of subsequent redemption. Such was the positive prohibition of alienating a fief held by descent from the father (feudum paternum), without the consent of the kindred on that line.[i] Such, too, were the still more rigorous fetters imposed by the English statute of entails, which precluded all lawful alienation, till, after two centuries, it was overthrown by the fictitious process of a common recovery. Though these partake in some measure of the feudal spirit, and would form an important head in the legal history of that system, it will be

sufficient to allude to them in a sketch which is confined to the development of its political influence

A custom very similar in effect to subinfeudation was the tenure by *frérage*, which prevailed in many parts of France. Primogeniture, in that extreme which our common law has established, was unknown, I believe, in every country upon the Continent The customs of France found means to preserve the dignity of families, and the indivisibility of a feudal homage, without exposing the younger sons of a gentleman to absolute beggary or dependence Baronies, indeed, were not divided but the eldest son was bound to make a provision in money, by way of appanage, for the other children, in proportion to his circumstances and their birth *j* As to inferior fiefs, in many places an equal partition was made, in others, the eldest took the chief portion, generally two thirds, and received the homage of his brothers for the remaining part, which they divided To the lord of whom the fief was held, himself did homage for the whole *k* In the early times of the feudal policy, when military service was the great object of the relation between lord and vassal, this, like all other subinfeudation, was rather advantageous to the former, for when the homage of a fief was divided, the service was diminished in proportion Suppose, for example, the obligation of military attendance for an entire manor to have been forty days, if that came to be equally split among two, each would owe but a service of twenty But if, instead of being homagers to the same suzerain one tenant held immediately of the other, as every feudatory might summon the aid of his own vassals, the superior lord would in fact, obtain the service of both Whatever opposition, therefore was made to the rights of subinfeudation or frerage would indicate a decay in the military character, the living principle of feudal tenure Accordingly, in the reign of Philip Augustus when the fabric was beginning to shake, we find a confederate agreement of some principal nobles sanctioned by the king to abrogate the mesne

j Du Cange v Apanamentum, Baro Baronie ne depart me entre frères se leur pere ne leur a fait partie mes l a nsnez do t fa re avenant bienfet au pu sné et si doit les filles marier Etablissem de St Lous c 24

k This was also the law of Flanders and Hainault Martenne Thesaurus Anecdotor t 1 p 1092. The customs as to succession were exceedingly various as indeed they continued to be until the late generalization of French law Recueil des Histor t i préface p 108, Hist de Languedoc t 1 p 111 511 In the former work it is said that primogeniture was introduced by the Normans from Scandinavia

measure answered the purpose, till the craving necessities and covetous policy of kings substituted for them more durable and onerous burdens

I might here, perhaps, close the enumeration of feudal incidents, but that the two remaining, wardship and marriage, though only partial customs, were those of our own country, and tend to illustrate the rapacious character of a feudal aristocracy.

In England, and in Normandy, which either led the way to, or adopted, all these English institutions, the lord had the wardship of his tenant during minority.[q] By virtue of this right he had both the care of his person and received to his own use the profits of the estate. There is something in this custom very conformable to the feudal spirit, since none was so fit as the lord to train up his vassal to arms, and none could put in so good a claim to enjoy the fief, while the military service for which it had been granted was suspended. This privilege of guardianship seems to have been enjoyed by the lord in some parts of Germany;[r] but in the law of France the custody of the land was intrusted to the next heir, and that of the person, as in socage tenures among us, to the nearest kindred of that blood which could not inherit.[s] By a gross abuse of this custom in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers This was one of the most vexatious parts of our

q Recueil des Historiens, t xi préf p 162 Argou Inst au Droit François l i c 6, Houard, Anciennes Loix des François, t i p 147

r Schilter, Institutiones Juris Feudalis p 85

s Du Cange, v Custodia, Assises de Jerusalem c 178, Etablissemens de St Louis, c. 17, Beaumanoir, c 15, Argou, l i c 6 The second of these uses nearly the same expression as Sir John Fortescue in accounting for the exclusion of the next heir from guardianship of the person, that mauvaise conditionis li fairoit faire la garde du loup

I know not any mistake more usual in English writers who have treated of the feudal law than that of supposing that guardianship in chivalry was an universal custom A charter of 1198, in Rymer, t i p 105, seems indeed to imply that the incidents of garde noble and of marriage existed in the Isle of Oleron. But Eleanor, by a later instrument, grants that the inhabitants of that island should have the wardship and marriage of their heirs without any interposition, and expressly abrogates all the evil customs that her husband had introduced p 112 From hence I should infer that Henry II had endeavored to impose these feudal burdens (which perhaps were then new even in England) upon his continental dominions Radulphus de Diceto tells us of a claim made by him to the wardship of Chateauroux in Berry which could not legally have been subject to that custom Twysden, X Scriptores, p 599 And he set up pretensions to the custody of the duchy of Brittany after the death of his son Geoffrey This might perhaps be justified by the law of Normandy, on which Brittany depended But Philip Augustus made a similar claim In fact, these political assertions of right, prompted by ambition and supported by force, are bad precedents to establish rules of jurisprudence Both Philip and Henry were abundantly disposed to realize so convenient a prerogative as that of guardianship in chivalry over the fiefs of their vassals Lyttleton's Henry II vol iii p 441

feudal tenures and was never, perhaps more sorely felt than in their last stage under the Tudor and Stuart families

Another right given to the lord by the Norman and English laws was that of marriage, or of tendering a husband to his female wards while under age, whom they could not reject without forfeiting the value of the marriage, that is as much as anyone would give to the guardian for such an alliance This was afterwards extended to male wards and became a very lucrative source of extortion to the crown as well as to mesne lords This custom seems to have had the same extent as that of wardships It is found in the ancient books of Germany but not of France[t] The kings however and even inferior lords of that country required their consent to be solicited for the marriage of their vassals daughters Several proofs of this occur in the history as well as in the laws of France, and the same prerogative existed in Germany Sicily and England[u] A still more remarkable law prevailed in the kingdom of Jerusalem The lord might summon any female vassal to accept one of three whom he should propose as her husband No other condition seems to have been imposed on him in selecting these suitors than that they should be of equal rank with herself Neither the maiden's coyness nor the widow's affliction neither aversion to the proffered candidates nor love to one more favored seem to have passed as legitimate excuses One only one plea could come from the lady's mouth who was resolute to hold her land in single blessedness It was that she was past sixty years of age and after this unwelcome confession it is justly argued by the author of the law book which I quote that the lord could not decently press her into matrimony[v] However outrageous such an usage may appear to our ideas it is to be recollected that the

[t] Schilter ub supra. Du Cange voc. Disparagare seems to admit this feudal right in France but the passages he quotes do not support it See also the word Maritagium [M Guizot has however observed (Hist de la Civilisation en France Leçon 39) that the feudal incidents of guardianship in chivalry by marriage were more frequent than I seem to suppose. The customary law was so variable that it is dangerous to rely on particular instances or to found a general negative on their absence 848.]

[u] Ordonnances des Rois t. p. 55 Assises de Jérus. c. 80, and Thaumassiere sur no e Du Cange ub supra Glanvil. l. vi. c. 12 Giannone, l. x. c. 5 Wright on Tenures p. 94. St. Louis in return declared that he would not marry his own daughter without the consent of his barons Joinville t. ii. p. 140. Henry I of England had promised the same. The guardian of a female minor was obliged to give security to her lord not to marry her without his consent Etablissemens de St. Louis c. 63.

[v] Ass. de Jerus c. 224. I must observe that Laurière says this usage prevailed en plusieurs lieux though he quotes no authority —Ordonnances des Rois p. 155.

peculiar circumstances of that little state rendered it indispensable to possess in every fief a proper vassal to fulfil the duties of war

These feudal servitudes distinguish the maturity of the system No trace of them appears in the capitularies of Charlemagne and his family nor in the instruments by which benefices were granted I believe that they did not make part of the regular feudal law before the eleventh or, perhaps the twelfth century though doubtless partial usages of this kind had grown up antecedently to either of those periods If I am not mistaken no allusion occurs to the lucrative rights of seigniory in the Assises de Jerusalem which are a monument of French usages in the eleventh century Indeed that very general commutation of allodial property into tenure which took place between the middle of the ninth and eleventh centuries would hardly have been effected if fiefs had then been liable to such burdens and so much extortion In half barbarous ages the strong are constantly encroaching upon the weak a truth which if it needed illustration might find it in the progress of the feudal system

We have thus far confined our inquiry to fiefs holden on terms of military service since those are the most ancient and regular as well as the most consonant to the spirit of the system They alone were called proper feuds and all were presumed to be of this description until the contrary was proved by the charter of investiture A proper feud was bestowed without price without fixed stipulation upon a vassal capable of serving personally in the field But gradually with the help of a little legal ingenuity improper fiefs of the most various kinds were introduced retaining little of the characteristics and less of the spirit which distinguished the original tenures Women if indeed that were an innovation were admitted to inherit them *w* they were granted for a price and without reference to military service The language of the feudal law was applied by a kind of metaphor to almost every transfer of property Hence pensions of money and allowances of provisions however remote from right notions of a fief were sometimes granted under that name and even where land

w Women did not inherit fiefs in the German empire Whether they were ever excluded from succession in France I know not, the genius of a military tenure and the old Teutonic customs preserved in the Salic law seem adverse to their possession of feudal lands yet the practice at least from the eleventh century downwards does not support the theory

was the subject of the donation, its conditions were often lucrative, often honorary, and sometimes ludicrous [x]

There is one extensive species of feudal tenure which may be distinctly noticed The pride of wealth in the middle ages was principally exhibited in a multitude of dependents The court of Charlemagne was crowded with officers of very rank, some of the most eminent of whom exercised functions about the royal person which would have been though fit only for slaves in the palace of Augustus or Antonine The freeborn Franks saw nothing menial in the titles of cup bearer, steward, marshal, and master of the horse, which are still borne by the noblest families in many parts of Europe, and, till lately, by sovereign princes in the empire [y] From the court of the king this favorite piece of magnificence descended to those of the prelates and barons, who surrounded themselves with household officers called ministerials, a name equally applied to those of a servile and of a liberal description [z] The latter of these were rewarded with grants of lands, which they held under a feudal tenure by the condition of performing some domestic service to the lord What was called in our law grand serjeanty affords an instance of this species of fief [a] It is, however, an instance of the noblest kind, but Muratori has given abundance of proofs that the commonest mechanical arts were carried on in the houses of the great by persons receiving lands upon those conditions [b]

These imperfect feuds, however, belong more properly to the history of law, and are chiefly noticed in the present sketch because they attest the partiality manifested during the middle

[x] Crag Jus Feudale l. 1 tit 10 Du Cange voc Feudum de Camera &c. In the treaty between Henry I of England and Robert Count of Flanders A D 1101 the king stipulates to pay annually 400 marks of silver *in feodo* for the military service of his ally Rymer Fœdera t 1 p 2

[y] The Count of Anjou under Louis VI claimed the office of Great Seneschal of France, that is to carry dishes to the king's table on state days (Simond v 135) Thus the feudal notions of grand serjeanty prepared the way for the restoration of royal supremacy, as the military tenures had impaired it The wound and the remedy came from the same lance If the feudal system was incompatible with despotism, and even, while in its full vigor with legitimate authority it kept alive the sense of a supreme chief of a superiority of rank of a certain subjection to an hereditary sovereign not yet testified by unlimited obedience but by homage and loyalty

[z] Schmidt Hist. des Allemands, t 1 p 92 Du Cange v Familia Ministeriales

[a] This tenure, says Littleton is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king as to carry the banner of the king or his lance, or to lead his array or to be his marshal or to carry his sword before him at his coronation or to be his sewer at his coronation or his carver or his butler or to be one of his chamberlains at the receipt of his exchequer or to do other like services Sect 153

[b] Antiq Ital Dissert 11 ad finem

ages to the name and form of a feudal tenure In the regular military fief we see the real principle of the system, which might originally have been defined an alliance of free landholders arranged in degrees of subordination, according to their respective capacities of affording mutual support

The peculiar and varied attributes of feudal tenures naturally gave rise to a new jurisprudence, regulating territorial rights in those parts of Europe which had adopted the system For a length of time this rested in traditionary customs, observed in the domains of each prince or lord, without much regard to those of his neighbors Laws were made occasionally by the emperor in Germany and Italy, which tended to fix the usages of those countries About the year 1170, Girard and Obertus, two Milanese lawyers, published two books of the law of fiefs, which obtained a great authority, and have been regarded as the groundwork of that jurisprudence [c] A number of subsequent commentators swelled this code with their glosses and opinions, to enlighten or obscure the judgment of the imperial tribunals These were chiefly civilians or canonists, who brought to the interpretation of old barbaric customs the principles of a very different school Hence a manifest change was wrought in the law of feudal tenure, which they assimilated to the usufruct or the emphyteusis of the Roman code, modes of property somewhat analogous in appearance, but totally distinct in principle, from the legitimate fief These Lombard lawyers propagated a doctrine which has been too readily received, that the feudal system originated in their country, and some writers upon jurisprudence, such as Duck and Sir James Craig, incline to give a preponderating authority to their code But whatever weight it may have possessed within the limits of the empire a different guide must be followed in the ancient customs of France and England [d] These were fresh from the fountain of that curious polity with which the stream of Roman law had never mingled its waters In England we know that the Norman system established between the Conquest and the reign of Henry II was restrained by

[c] Giannone, Ist. di Napol l xii c 3 The Libri Feudorum are printed in most editions of the Corpus Juris Civil s

[d] Giannone explicitly contrasts the French and Lombard laws respecting fiefs The latter was the foundation of the Libri Feudorum and formed the common law of Italy The former was introduced by Roger Guiscard into his dominions in three books of constitutions printed in Lindebrog's collection There were several material differences which Giannone enumerates especially the Norman custom of primogeniture Ist di Nap l xi c 5

regular legislation, by paramount courts of justice and by learned writings, from breaking into discordant local usages, except in a comparatively small number of places, and has become the principal source of our common law But the independence of the French nobles produced a much greater variety of customs The whole number collected and reduced to certainty in the sixteenth century, amounted to two hundred and eighty five, or omitting those inconsiderable for extent or peculiarity to sixty The earliest written customary in France is that of Bearn which is said to have been confirmed by Viscount Gaston IV in 1088 e Many others were written in the two subsequent ages, of which the customs of Beauvoisis, compiled by Beaumanoir under Philip III are the most celebrated, and contain a mass of information on the feudal constitution and manners Under Charles VII an ordinance was made for the formation of a general code of customary law by ascertaining forever in a written collection those of each district but the work was not completed till the reign of Charles IX This was what may be called the common law of the *pays coutumiers* or northern division of France, and the rule of all their tribunals unless where controlled by royal edicts

e There are two editions of this curious old code one at Pau in 155 republished with a fresh title-page and permission of Henry IV in 1602, the other at Lescars in 1633 These laws as we read them are subsequent to a revision made in the middle of the sixteenth century in which they were more or less corrected The basis however is unquestionably very ancient. We even find the composition for homicide preserved in them so that murder was not a capital offence in Bearn though robbery was such —Rubrica de Homicidis Art xxx See too Rubrica de Pœnis Art and ii.

on their followers were also analogous to fiefs; and, as the Roman institutions were one source of the law of tenure, so these were another.

It is of great importance to be on our guard against seeming analogies which vanish when they are closely observed We should speak inaccurately if we were to use the word feudal for the service of the Irish or Highland clans to their chieftain; their tie was that of imagined kindred and respect for birth, not the spontaneous compact of vassalage. Much less can we extend the name of feud, though it is sometimes strangely misapplied, to the polity of Poland and Russia. All the Polish nobles were equal in rights, and independent of each other; all who were less than noble were in servitude No government can be more opposite to the long gradations and mutual duties of the feudal system *c*

The regular machinery and systematic establishment of feuds, in fact, may be considered as almost confined to the dominions of Charlemagne, and to those countries which afterwards derived it from thence In England it can hardly be thought to have existed in a complete state before the Conquest. Scotland, it is supposed, borrowed it soon after from her neighbor The Lombards of Benevento had introduced feudal customs into the Neapolitan provinces, which the Norman conquerors afterwards perfected. Feudal tenures were so general in the kingdom of Aragon, that I reckon it among the monarchies which were founded upon that basis *d* Charlemagne's empire, it must be remembered, extended as far as

c In civil history many instances might be found of feudal ceremonies in countries not regulated by the feudal law Thus Selden has published an infeudation of a vayvod of Moldavia by the King of Poland A.D 1485 in the regular forme, vol. iii. p 514. But these political fiefs have hardly any connection with the general system, and merely denote the subordination of one prince or people to another

d It is probable that feudal tenure was as ancient in the north of Spain as in the contiguous provinces of France But it seems to have chiefly prevailed in Aragon about the twelfth and thirteenth centuries, when the Moors south of the Ebro were subdued by the enterprise of private nobles, who after conquering estates for themselves did homage for them to the king James I, upon the reduction of Valencia, granted lands by way of fief on condition of defending that kingdom against the Moors, and residing personally upon the estate Many did not perform this engagement, and were deprived of the lands in consequence It appears by the testament of this monarch that feudal tenures subsisted in every part of his dominions.—Martenne, Thesaurus Anecdotorum, t i p 1141, 1155 An edict of Peter II in 1210 prohibits the alienation of *emphyteuses* without the lord's consent It is hard to say whether regular fiefs are meant by this word.—De Marca, Marca Hispanica, p 1396. This author says that there were no arriere fiefs in Catalonia.

The Aragonese fiefs appear, however, to have differed from those of other countries in some respects. Zurita mentions fiefs according to the custom of Italy which he explains to be such as were liable to the usual feudal aids for marrying the lord's daughter and other occasions. We may infer therefore, that these prestations were not customary in Aragon.—Anales de Aragon t. ii. p. 62.

the Ebro. But in Castile *e* and Portugal they were very rare, and certainly could produce no political effect. Benefices for life were sometimes granted in the kingdoms of Denmark and Bohemia.*f* Neither of these, however, nor Sweden, nor Hungary, come under the description of countries influenced by the feudal system *g* That system, however, after all these limitations, was so extensively diffused, that it might produce confusion as well as prolixity to pursue collateral branches of its history in all the countries where it prevailed. But this embarrassment may be avoided without any loss, I trust, of important information The English constitution will find its place in another portion of these volumes; and the political condition of Italy, after the eleventh century, was not much affected, except in the kingdom of Naples, by the laws of feudal tenure I shall confine myself, therefore, chiefly to France and Germany; and far more to the former than the latter country. But it may be expedient first to contemplate the state of society in its various classes during the prevalence of feudal principles, before we trace their influence upon the national government.

It has been laid down already as most probable that no proper aristocracy, except that of wealth, was known under the early kings of France, and it was hinted that hereditary benefices, or, in other words, fiefs, might supply the link that was wanting between personal privileges and those of descent The possessors of beneficiary estates were usually the richest and most conspicuous individuals in the state They were immediately connected with the crown, and partakers in the exercise of

e What is said of vassalage in Alfonzo X.'s code, Las siete partidas is short and obscure, nor am I certain that it meant anything more than voluntary commendation the custom mentioned in the former part of this chapter, from which the vassal might depart at pleasure See, however Du Cange, v Honor, where authorities are given for the existence of Castilian fiefs and I have met with occasional mention of them in history I believe that tenures of this kind were introduced in the fourteenth and fifteenth centuries, but not to any great extent —Marina, Teoria de las Cortes t iii p 14.

Tenures of a feudal nature as I collect from Freiri Institut Juris Lusitani tom ii t 1 and 3 existed in Portugal, though the jealousy of the crown prevented the system from being established There were even territorial jurisdictions in that kingdom though not at least originally in Castile

f Daniæ regni politicus status. Elzevir, 1629. Stransky Respublica Bohemica ib In one of the oldest Danish historians Sweno, I have noticed this expression Waldemarus, patris tunc potitus *feodo* Langebek, Scrip Rerum Danic t 1 p 62 By this he means the duchy of Sleswic, not a fief but an honor or government possessed by Waldemar Saxo Grammaticus calls it more classically paternæ præfecturæ dignitas. Sleswic was in later times, sometimes held as a fief, but this does not in the least imply that lands in Denmark proper were feudal, of which I find no evidence.

g Though there were no feudal tenures in Sweden yet the nobility and others were exempt from taxes on condition of serving the king with a horse and arms at their own expense, and a distinction was taken between *liber* and *tributarius* But any one of the latter might become of the former class, or vice versâ.—Sueciæ descriptio Elzevir, 1631, p 92.

contributed to elucidate that branch of history which regards the descent of illustrious families.

When the privileges of birth had thus been rendered capable of legitimate proof, they were enhanced in a great degree, and a line drawn between the high-born and ignoble classes, almost as broad as that which separated liberty from servitude. All offices of trust and power were conferred on the former; those excepted which appertain to the legal profession. A plebeian could not possess a fief [n] Such at least was the original strictness; but as the aristocratic principle grew weaker, an indulgence was extended to heirs, and afterwards to purchasers [o] They were even permitted to become noble by the acquisition, or at least by its possession for three generations [p] But notwithstanding this ennobling quality of the land, which seems rather of an equivocal description, it became an established right of the crown to take, every twenty years, and on every change of the vassal, a fine, known by the name of franc-fief, from plebeians in possession of land held by a noble tenure.[q] A gentleman in France or Germany could not exercise any trade without derogating, that is, losing, the advantages of his rank A few exceptions were made, at least in the former country, in favor of some liberal arts, and of foreign commerce [r] But in nothing does the feudal haughtiness of birth more show itself than in the disgrace which attended unequal marriages No children could inherit a territory held immediately of the empire unless both their parents belonged to the higher class of nobility In France the offspring of a gentleman by a plebeian mother were reputed noble for the

[n] We have no English word that conveys the full sense of *roturier* How glorious is this deficiency in our political language and how different are the ideas suggested by commoner! Roturier according to Du Cange, is derived from rupturarius, a peasant, ab agrum rumpendo

[o] The Establishments of St Louis forbid this innovation but Beaumanoir contends that the prohibition does not extend to descent or marriage c. 48. The roturier who acquired a fief, if he challenged any one, fought with ig noble arms, but in all other respects was treated as a gentleman Ibid Yet a knight was not obliged to do homage to the roturier who became his superior by the acquisition of a fief on which he depended Carpentier, Supplement ad Du Cange voc Homagium

[p] Etablissemens de St Louis c 143 and note, in Ordonnances des Rois t. i See also preface to the same volume, p xii According to Mably, the possession of a fief did not cease to confer nobility (analogous to our barony by tenure) till the Ordonnances des Blois in 1579 Observations sur l Hist de France, l iii c 1 note 6 But Laurière, author of the preface above cited, refers to Bouteiller, a writer of the fourteenth century, to prove that no one could become noble without the king s authority The contradiction will not much perplex us when we reflect on the disposition of lawyers to ascribe all prerogatives to the crown at the expense of territorial proprietors and of ancient customary law

[q] The right, originally perhaps usurpation, called franc-fief, began under Philip the Fair Ordonnances des Rois, t i p 324; Denisart art Franc fief

[r] Houard Dict du Droit Normand Encyclopédie, art. Noblesse. Argou, l. ii c. 2

purposes of inheritance and of exemption from tribute[s] But they could not be received into any order of chivalry, though capable of simple knighthood, nor were they considered as any better than a bastard class deeply tainted with the alloy of their maternal extraction Many instances occur where letters of nobility have been granted to reinstate them in their rank[t] For several purposes it was necessary to prove four, eight, sixteen, or a greater number of quarters, that is, of coats borne by paternal and maternal ancestors, and the same practice still subsists in Germany[u]

It appears therefore, that the original nobility of the Continent were what we may call self created, and did not derive their rank from any such concessions of their respective sovereigns as have been necessary in subsequent ages In England the baronies by tenure might belong to the same class, if the lands upon which they depended had not been granted by the crown But the kings of France, before the end of the thirteenth century, began to assume a privilege of creating nobles by their own authority, and without regard to the tenure of land Philip the Hardy, in 1271, was the first French king who granted letters of nobility, under the reigns of Philip the Fair and his children they gradually became frequent[v] This effected a change in the character of nobility, and had as obvious a moral, as other events of the same age had a political, influence in diminishing the power and independence of the territorial aristocracy The privileges originally connected with ancient lineage and extensive domains became common to the low born creatures of a court and lost consequently part of their title to respect The lawyers as I have observed above, pretended that nobility could not exist without a royal concession They acquired themselves, in return for their exaltation of prerogative, an official nobility by the exercise of magistracy The institutions of chivalry again gave rise to a vast increase of gentlemen, knighthood, on whomso

[s] Nobility to a certain degree was communicated through the mother alone not only by the custom of Champagne but in all parts of France that is, the issue were "gent lhommes du fait de leur corps" and could possess fiefs but, says Beaumanoir la gentilesse par laquelle on devient chevalier doit venir de par le père c. 45. There was a proverbial maxim in French law rather emphatic than decent, to express the derivation of gentility from the father and of freedom from the mother

[t] Beaumanoir c. 45 Du Cange Dissert. 10. sur Joinville Carpentier voc. Noblitatio.

[u] (Note XII.)

[v] Velly t. vi. p. 432 Du Cange and Carpentier voce Noblitare &c. Boulainvilliers Hist. de l'Ancien Gouvernement de France t. i. p. 317

ever conferred by the sovereign, being a sufficient passport to noble privileges It was usual, perhaps, to grant previous letters of nobility to a plebeian for whom the honor of knighthood was designed

In this noble or gentle class there were several gradations. All those in France who held lands immediately depending upon the crown, whatever titles they might bear, were comprised in the order of barons These were originally the peers of the king's court, they possessed the higher territorial jurisdiction, and had the right of carrying their own banner into the field *w* To these corresponded the Valvassores majores and Capitanei of the empire In a subordinate class were the vassals of this high nobility, who, upon the Continent, were usually termed Vavassors—an appellation not unknown, though rare, in England *x* The Châtelains belonged to the order of Vavassors, as they held only arriere fiefs; but, having fortified houses, from which they derived their name (a distinction very important in those times), and possessing ampler rights of territorial justice, they rose above the level of their fellows in the scale of tenure *y* But after the personal nobility

w Beaumanoir, c 34 Du Cange, v Baro, Etablissemens de St Louis l 1 c 24, l 11 c 36 The vassals of inferior lords were however called, improperly Barons, both in France and England Recueil des Historiens, t xi p 300 Madox Baronia Anglica, p 133 In perfect strictness those only whose immediate tenure of the crown was older than the accession of Hugh Capet were barons of France, namely, Bourbon, Coucy and Beaujeu or Beaujolois It appears however by a register in the reign of Philip Augustus that fifty nine were reckoned in that class the feudatories of the Capetian fiefs, Par s and Orleans being confounded with the original vassals of the crown Du Cange voc Baro

x Du Cange v Vavassor Velly, t vi p 151, Madox Baronia Anglica p 135 There is, perhaps, hardly any word more loosely used than Vavassor Bracton says, Sunt etiam Vavassores, magnæ dignitatis viri In France and Germany they are sometimes named with much less honor Je suis un chevalier ne de cest part, de *vavasseurs et de basse gent*, says a romance This is to be explained by the poverty to which the subdivision of fiefs reduced idle gentlemen

Chaucer concludes his picturesque description of the franklin in the prologue to the Canterbury Tales thus — "Was never such a worthy vavassor This has perplexed some of our commentators who not knowing well what was meant by a franklin or by a vavassor, fancied the latter to be of much higher quality than the former The poet, however, was strictly correct, his acquaintance with French manners showed him that the country squire, for his franklin is no other, precisely corresponded to the vavassor in France Those who having been deceived, by comparatively modern law books into a notion that the word franklin denoted but a stout yeoman in spite of the wealth and rank which Chaucer assigns to him and believing also, on the authority of the loose phrase in Bracton that all vavassors were ' magnæ dignitatis viri, might well be puzzled at seeing the words employed as synonyms See Todd s Illustrations of Gower and Chaucer for an instance

y Du Cange, v Castellanus, Coutumes de Poitou tit iii , Loiseau Traité des Seigneuries p 160 Whoever had a right to a castle had la haute justice, this being so incident to the castle that it was transferred along with it There might, however, be a Seigneur haut justicier below the Chatelain, and a ridiculous distinction was made as to the number of posts by which their gallows might be supported A baron s instrument of execution stood on four posts, a chatelain's on three, while the inferior lord who happened to possess la haute justice was forced to hang his subjects on a two legged machine Coutumes de Poitou, Du Cange, v Furca

Lauriere quotes from an old manuscript the following short scale of

undoubtedly there existed a great many proprietors of land and others, as free, though not as privileged, as the nobility In the south of France, and especially Provence, the number of freemen is remarked to have been greater than in the parts on the right bank of the Loire, where the feudal tenures were almost universal.g I shall quote part of a passage in Beaumanoir which points out this distinction of ranks pretty fully "It should be known," he says,h "that there are three conditions of men in this world, the first is that of gentlemen, and the second is that of such as are naturally free, being born of a free mother All who have a right to be called gentlemen are free, but all who are free are not gentlemen Gentility comes by the father, and not by the mother, but freedom is derived from the mother only, and whoever is born of a free mother is himself free, and has free power to do anything that is lawful"i

In every age and country until times comparatively recent, personal servitude appears to have been the lot of a large, perhaps the greater, portion of mankind We lose a good deal of our sympathy with the spirit of freedom in Greece and Rome when the importunate recollection occurs to us of the tasks which might be enjoined, and the punishments which might be inflicted, without control either of law or opinion, by the keenest patriot of the Comitia, or the Council of Five Thousand A similar, though less powerful feeling will often force itself on the mind when we read the history of the middle ages The Germans in their primitive settlements were accustomed to the notion of slavery incurred not only by captivity but by crimes by debt, and especially by loss in gaming When they invaded the Roman empire they found the same condition established in all its provinces Hence from the beginning of the era now under review servitude under somewhat different modes was extremely common There is some difficulty in ascertaining its varieties and stages In the Salic laws and in the Capitularies we read not only of Servi but of Tributarii Lidi and Coloni who were cultivators of the earth and subject to residence upon their lord's estate though not destitute of property or civil rights.j Those who appertained to the

g Heeren, Essai sur les Croisades, p. 12.

h Coutumes de Beauvoisis, c. 45, p. [illegible]

i [Note XIII.]

j These passages are too numerous for reference In a very early charter in Martene's Thesaurus Anecdotorum, I.

demesne lands of the crown were called Fiscalini The composition for the murder of one of these was much less than that for a freeman *k* The number of these servile cultivators was undoubtedly great, yet in those early times, I should conceive, much less than it afterwards became Property was for the most part in small divisions, and a Frank who could hardly support his family upon a petty allodial patrimony was not likely to encumber himself with many servants But the accumulation of overgrown private wealth had a natural tendency to make slavery more frequent Where the small proprietors lost their lands by mere rapine, we may believe that their liberty was hardly less endangered *l* Even where this was not the case yet as the labor either of artisans or of free husbandmen was but sparingly in demand, they were often compelled to exchange their liberty for bread *m* In seasons also of famine, and they were not infrequent, many freemen sold themselves to slavery A capitulary of Charles the Bald in 864 permits their redemption at an equitable price *n* Others became slaves as more fortunate men became vassals, to a powerful lord for the sale of his protection Many were reduced into this state through inability to pay those pecuniary compositions for offences which were numerous and sometimes heavy in the barbarian codes of law, and many more by neglect of attendance on military expeditions of the king, the penalty of which was a fine called Heribann, with the alternative of perpetual servitude *o* A source of loss of liberty which may strike us as more extraordinary was superstition, men were infatuated enough to surrender themselves as well as their properties to churches and monasteries, in return for

1 p 20 lands are granted cum hominibus ibidem permanentibus quos *colonar o ordine* tributarios esse constitumus Men of this class were called in Italy, Aldiones A Lombard capitulary of Charlemagne says Aldiones ea lege vivunt in Italia sub servitute dominorum suorum qua Fiscalini vel Liberti vivunt in Francia. Muratori Dissert 14 [Note XIV.]

k Originally it was but 45 solidi (Leges Salicæ c 43) but Charlemagne raised it to 100 Baluz i Capitular a p 402 There are several provisions in the laws of this great and wise monarch in favor of liberty If a lord claimed any one either as his villein or slave (colonus sive servus) who had escaped beyond his territory he was not to be given up till strict inquiry had been made in the place to which he was asserted to belong as to his condition, and that of his family p 400. And if the villein showed a charter of enfranchisement the proof of its forgery was to lie upon the lord No man's liberty could be questioned in the Hundred court.

l Montesquieu ascribes the increase of personal servitude in France to the continued revolts and commotions under the two first dynasties l xxx c. 11

m Du Cange v Obnoxatio

n Baluz i Capitular a The Greek traders purchased famished wretches on the coasts of Italy whom they sold to the Saracens —Muratori Annali d Italia A D 785 Much more would persons in this extremity sell themselves to neighboring lords

o Du Cange Heribannum. A full heribannum was 60 solidi but it was sometimes assessed in proportion to the wealth of the party

Under every denomination of servitude, the children followed their mother's condition, except in England, where the father's state determined that of the children, on which account bastards of female villeins were born free, the law presuming the liberty of their father.[t] The proportion of freemen, therefore, would have been miserably diminished if there had been no reflux of the tide which ran so strongly towards slavery. But the usage of manumission made a sort of circulation between these two states of mankind This, as is well known, was an exceedingly common practice with the Romans, and is mentioned, with certain ceremonies prescribed, in the Frankish and other early laws The clergy, and especially several popes, enforced it as a duty upon laymen, and inveighed against the scandal of keeping Christians in bondage[u] As society advanced in Europe, the manumission of slaves grew more frequent[v] By the indulgence of custom in some places, or perhaps by original convention, villeins might possess property and thus purchase their own redemption Even where they had no legal title to property, it was accounted inhuman to divest them of their little possession (the peculium of Roman law), nor was their poverty, perhaps, less tolerable, upon the whole, than that of the modern peasantry in most countries of Europe It was only in respect of his lord, it must be remembered, that the villein, at least in England, was without rights;[w] he might inherit, pur-

was liable to be treated as a slave—Marculfi Formulæ l ii 39 Even in the twelfth century it was the law of Flanders that whoever married a villein became one himself after he had lived w th her a twelvemonth—Recueil des Historiens t xii p 350. And by a cap tulary of Pepin if a man married a v lle n believing her to be free he m ght repud ate her and marry another —Baluze p 181

Villeins themselves could not marry w thout the lord s license, under pen alty of forfe t ng the r goods, or at least of a mulct—Du Cange v Forismaritagium This seems to be the true origin of the famous mercheta mul erum which has been ascribed to a very dif ferent custom—Du Cange v Mercheta Mul erum Dalrymple s Annals of Scotland vol i p 312, Archæologia, vol xii p 31

[t] Littleton, s 188. Bracton indeed holds that the spurious issue of a ne f though by a free father should be a villein quia sequitur cond tionem ma tr s quasi vulgo conceptus l i c. 6. But the laws under the name of Henry I declare that a son should follow his father s condition so that this peculiarity is very ancient in our law—Leges Hen I c 75 and 77

[u] Enfranchisements by testament are very common Thus in the will of Se n ofred Count of Barcelona in 966 we find the following piece of corrupt Latin De ipsos servos meos et ancil las illi qui traditi fuerunt faciatis illos libros propter remedium animæ meæ, et alii qui fuerunt de parentorum meo rum remaneant ad fratres meos.—Marca Hispanica p 887

[v] No one could enfranchise his vill le n w thout the superior lord s consent for this was to dim nish the value of his land *apeticer le fief*—Beaumanoir c 15 Etabl ssemens de St Louis c 34 It was necessary therefore for the villein to obta n the suzera n s confirmation, otherwise he only changed masters and escheated as it were to the superior, for the lord who had granted the char ter of franchise was *estopped* from claiming him again

[w] Littleton s 189 Perhaps this is not appl cable to other countries Villeins were incapable of being received as witnesses against freemen—Recueil

chase, sue in the courts of law, though, as defendant in a real action or suit wherein land was claimed, he might shelter himself under the plea of villenage. The peasants of this condition were sometimes made use of in war, and rewarded with enfranchisement, especially in Italy, where the cities and petty states had often occasion to defend themselves with their own population, and in peace the industry of free laborers must have been found more productive and better directed. Hence the eleventh and twelfth centuries saw the number of slaves in Italy begin to decrease, early in the fifteenth a writer quoted by Muratori speaks of them as no longer existing[x] The greater part of the peasants in some countries of Germany had acquired their liberty before the end of the thirteenth century, in other parts, as well as in all the northern and eastern regions of Europe, they remained in a sort of villenage till the present age. Some very few instances of predial servitude have been discovered in England so late as the time of Elizabeth[y] and perhaps they might be traced still lower Louis Hutin in France, after innumerable particular instances of manumission had taken place, by a general edict in 1315, reciting that his kingdom is denominated the kingdom of the Franks, that he would have the fact to correspond with the name, emancipates all persons in the royal domains upon paying a just composition, as an example *for other lords possessing villeins to follow*[z] Philip the Long renewed the same edict three years afterwards, a proof that it had not been carried into execution[a] Indeed there are letters of the former prince wherein, considering that many of his subjects are not apprised of the extent of the benefit conferred upon them he directs his officers to tax them as high as their fortunes can well bear[b]

des Historiens, t. xiv preface p. 62. There are some charters of kings of France admitting the serfs of particular monasteries to give evidence, or to engage in the *judicial combat* against freemen.—Ordonnances des Rois, t. i. p. 3. But I do not know that their testimony except against their lord, was ever refused in England, their state of servitude not being absolute, like that of negroes in the West Indies, but particular and resembling that of an apprentice or hired servant. This subject, however is not devoid of obscurity

[x] Dissert. 14.

[y] Barrington's Observations on the Ancient Statutes, p. 274.

[z] Ordonnances des Rois, t. i. p. 583.

[a] Id. p. 633.

[b] Velly t. viii. p. 38. Philip the Fair had emancipated the villeins in the royal domains throughout Languedoc, retaining only an annual rent for their lands, which thus became *censives*, or *emphyteuses* It does not appear by the charter that he sold this enfranchisement, though there can be little doubt about it He permitted his vassals to follow the example.—Vaissete, Hist. de Languedoc t. iv Appendix, p. 32.

It is not generally known, I think, that predial servitude was not abolished in all parts of France by the revolt on. In some places, says Passerat the peasants are taillables à volonté that is, their contribution is not permanent, but assessed by the lord with the advice of prudhommes, resseants sur les lieux according to the peasant's ability Oth-

from all public tributes, except the feudal aids, 4 The freedom from legislative control, and, 5 The exclusive exercise of original judicature in their dominions Privileges so enormous, and so contrary to all principles of sovereignty, might lead us, in strictness, to account France rather a collection of states, partially allied to each other than a single monarchy

1 Silver and gold were not very scarce in the first ages of the French monarchy but they passed more by weight than by tale A lax and ignorant government, which had not learned the lucrative mysteries of a royal mint, was not particularly solicitous to give its subjects the security of a known stamp in their exchanges [c] In some cities of France money appears to have been coined by private authority before the time of Charlemagne, at least one of his capitularies forbids the circulation of any that had not been stamped in the royal mint His successors indulged some of their vassals with the privilege of coining money for the use of their own territories, but not without the royal stamp About the beginning of the tenth century however, the lords among their other assumptions of independence issued money with no marks but their own [d] At the accession of Hugh Capet as many as a hundred and fifty are said to have exercised this power Even under St Louis it was possessed by about eighty, who excluding as far as possible the royal coin from circulation enriched themselves at their subjects expense by high duties (seigniorages) which they imposed upon every new coinage as well as by debasing its standard [e] In 1185 Philip Augustus requests the abbot of Corvey who had desisted from using his own mint to let the royal money of Paris circulate through his territories promising that when it should please the abbot to coin money afresh for himself the king would not oppose its circulation [f]

Several regulations were made by Louis IX to limit as far as lay in his power the exercise of this baronial privilege

c The practice of keeping fine gold and silver uncoined prevailed among private persons as well as in the treasury down to the time of Philip the Fair Nothing is more common than to find in the instruments of earlier time payments or fines stipulated by weight of gold or silver Le Blanc therefore thinks that little money was coined in France and that only for small payments.—Traite des Monnoyes It is curious that though there are many gold coins extant of the first race of kings yet few or none are preserved of the second or third before the reign of Philip the Fair—Du Cange v Moneta

d Vassette Hist de Languedoc t i p 170 Rec des Historiens t xi préf p 180 Du Cange v Moneta

e Le Blanc Traité des Monnoyes, p 9

f Du Cange voc Moneta Velly Hist de France t i p 93 Villaret t. xv p 200

and, in particular, by enacting that the royal money should circulate in the domains of those barons who had mints, concurrently with their own, and exclusively within the territories of those who did not enjoy that right Philip the Fair established royal officers of inspection in every private mint It was asserted in his reign, as a general truth, that no subject might coin silver money *g* In fact, the adulteration practised in those baronial mints had reduced their pretended silver to a sort of black metal, as it was called (moneta nigra), into which little entered but copper Silver, however, and even gold, were coined by the dukes of Brittany so long as that fief continued to exist No subjects ever enjoyed the right of coining silver in England without the royal stamp and superintendence *h*—a remarkable proof of the restraint in which the feudal aristocracy was always held in that country

2 The passion of revenge, always among the most ungovernable in human nature, acts with such violence upon barbarians, that it is utterly beyond the control of their imperfect arrangements of polity It seems to them no part of the social compact to sacrifice the privilege which nature has placed in the arm of valor Gradually, however, these fiercer feelings are blunted, and another passion, hardly less powerful than resentment, is brought to play in a contrary direction The earlier object accordingly of jurisprudence is to establish a fixed atonement for injuries, as much for the preservation of tranquillity as the prevention of crime Such were the weregilds of the barbaric codes, which, for a different purpose, I have already mentioned *i* But whether it were that the kindred did not always accept, or the criminal offer, the legal composition, or that other causes of quarrel occurred, private feuds (faida) were perpetually breaking out and many of Charlemagne's capitularies are directed against them After his time all

g Du Cange v Moneta The right of debas ng the coin was also claimed by this prince as a choice flower of his crown Item abaisser et amenuser la monnoye est privilege especial au roy de son droit royal si que a luy apparti ent et à non autre et encore en un seul cas c'est a scavoir en necessité et lors ne vient pas le ganeg, ne convertit en son profit especial mais en profit et en la defence du commun This was in a process commenced by the king's procureur general against the Comte de Nevers, for defacing his coin—Le Blanc Traité des Monnoyes p 92 In many places the lord took a sum from his tenants every three years under the name of monetagium or focagium in lieu of debas ng his money This was finally abolished in 1830.—Du Cange v Monetagium

h I do not extend this to the fact, for in the anarchy of Stephen's reign both b shops and barons coined money for themselves.—Hoveden p 490

i The antiquity of compositions for murder is illustrated by Iliad Σ, 498, where, in the description of the shield of Achilles two disputants are represented wrangling before the judge for the weregild or price of blood [illegible]

rigorous and burdensome The children of Israel grew rich in despite of insult and oppression, and retaliated upon their Christian debtors If an historian of Philip Augustus may be believed, they possessed almost one-half of Paris Unquestionably they must have had support both at the court and in the halls of justice The policy of the kings of France was to employ them as a sponge to suck their subjects' money, which they might afterwards express with less odium than direct taxation would incur Philip Augustus released all Christians in his dominions from their debts to the Jews reserving a fifth part to himself[q] He afterwards expelled the whole nation from France But they appear to have returned again—whether by stealth or, as is more probable by purchasing permission St Louis twice banished and twice recalled the Jews A series of alternate persecution and tolerance was borne by this extraordinary people with an invincible perseverance and a talent of accumulating riches which kept pace with their plunderers, till new schemes of finance supplying the turn, they were finally expelled under Charles VI, and it was not till long afterwards that they obtained any legal establishment in France[r]

A much more extensive plan of rapine was carried on by lowering the standard of coin Originally the pound a money of account, was equivalent to twelve ounces of silver,[s] and divided into twenty pieces of coin (sous) each equal consequently to nearly three shillings and four pence of modern English money[t] At the revolution the money of France had been depreciated in the proportion of seventy three to one, and the sol was about equal to an English halfpenny This was the effect of a long continuance of fraudulent and arbitrary government The abuse began under Philip I in 1103 who alloyed his silver coin with a third of copper So good an

q Rigord in Du Chesne Hist Franc. Script t p 8.

r Villaret, t. ix. p 433. Metz continued and I suppose still contains a great many Jews but Metz was not part of the ancient kingdom

s In every edition of this work till that of 1826, a strange misprint has appeared of twenty instead of twelve ounces as the division of the pound of silver Most readers will correct this for themselves but it is more material to observe that, according to what we find in the Mémoires de l'Acad des Inscriptions (Nouvelle Série) vol xv p 231 the pound in the time of Charlemagne was not of 12 ounces but of 13½ We must therefore add one ninth to the value of the sol so long as this continued to be the case I do not know the proofs upon which this assertion rests but the fact seems not to have been much observed by those who had previously written upon the subject

t Des deniers silver coin there was a golden sol worth forty pence. Le Blanc thinks the sol of the Salic law and Capitularies mean the latter piece of money The denarius, or penny was worth two sous six deniers of modern French coin

example was not lost upon subsequent princes, till, under St Louis, the mark-weight of silver, or eight ounces, was equivalent to fifty sous of the debased coin Nevertheless these changes seem hitherto to have produced no discontent, whether it were that a people neither commercial nor enlightened did not readily perceive their tendency, or, as has been ingeniously conjectured that these successive diminutions of the standard were nearly counterbalanced by an augmentation in the value of silver, occasioned by the drain of money during the crusades, with which they were about contemporaneous [u] But the rapacity of Philip the Fair kept no measures with the public, and the mark in his reign had become equal to eight livres, or a hundred and sixty sous of money Dissatisfaction, and even tumults, arose in consequence, and he was compelled to restore the coin to its standard under St Louis [v] His successors practised the same arts of enriching their treasury, under Philip of Valois the mark was again worth eight livres But the film had now dropped from the eyes of the people, and these adulterations of money, rendered more vexatious by continued recoinages of the current pieces, upon which a fee was extorted by the moneyers, showed in their true light as mingled fraud and robbery [w]

These resources of government, however, by no means superseded the necessity of more direct taxation The kings of France exacted money from the roturiers and particularly the inhabitants of towns, within their domains In this they only acted as proprietors, or suzerains, and the barons took the same course in their own lands Philip Augustus first ventured

[u] Villaret t xiv p 198. The price of commodities he asserts did not rise till the time of St Louis If this be said on good authority it is a remarkable fact but in England we know very little of prices before that period and I doubt if the history has been better traced in France

[v] It is curious and not perhaps unimportant to learn the course pursued in adjusting payments upon the restoration of good coin which happened pretty frequently in the fourteenth century when the States General or popular clamor, forced the court to retract its fraudulent policy Le Blanc has published several ordinances nearly to the same effect One of Charles VI explains the method adopted rather more fully than the rest All debts incurred since the depreciated coin began to circulate were to be paid in that coin or according to its value Those incurred previously to its commencement were to be paid according to the value of the money circulating at the time of the contract Item que tous les vrais emprunts faits en deniers sans fraude se payeront en telle monnoye comme l'on aura emprunté si elle a plein cours au temps du payement et sinon ils payeront en monnoye coursable lors selon la valeur et le prix du marc d'or ou d'argent p 32

[w] Continuator Guil de Nangis in Spicileg o t. 3 For the successive changes in the value of French coins the reader may consult Le Blanc's treatise or the Ordonnances des Rois also a dissertation by Bonamy in the Mém de l'Acad. des Inscriptions t. xxxi or he may find a summary view of them in Du Cange v Moneta. The bad consequences of these innovations are well treated by M de Lastoret in his elaborate preface to the sixteenth volume of the Ordonnances des Rois, p 40.

upon a stretch of prerogative, which, in the words of his biographer, disturbed all France He deprived by force, says Rigord, both his own vassals, who had been accustomed to boast of their immunities, and their feudal tenants, of a third part of their goods [x] Such arbitrary taxation of the nobility, who deemed that their military service discharged them from all pecuniary burdens, France was far too aristocratical a country to bear. It seems not to have been repeated; and his successors generally pursued more legitimate courses Upon obtaining any contribution, it was usual to grant letters-patent, declaring that it had been freely given, and should not be turned into precedent in time to come Several of these letters-patent of Philip the Fair are extant, and published in the general collection of ordinances [y] But in the reign of this monarch a great innovation took place in the French constitution, which, though it principally affected the method of levying money, may seem to fall more naturally under the next head of consideration

4 There is no part of the French feudal policy so remarkable as the entire absence of all supreme legislation We find it difficult to conceive the existence of a political society, nominally one kingdom and under one head, in which, for more than three hundred years, there was wanting the most essential attribute of government It will be requisite, however, to take this up a little higher, and inquire what was the original legislature of the French monarchy

Arbitrary rule, at least in theory, was uncongenial to the character of the northern nations Neither the power of making laws, nor that of applying them to the circumstances of particular cases, was left at the discretion of the sovereign The Lombard kings held assemblies every year at Pavia, where the chief officers of the crown and proprietors of lands deliberated upon all legislative measures, in the presence, and nominally at least with the consent, of the multitude [z] Frequent

[x] Du Chesne t. v p. 43

[y] Nasons scavoir et recognoissons que le derniere subvention que ils nous ont faite (les barons vassaux et nobles d Auvergne) de pure grace sans ce que ils y fussent tenus que de grace et voulons et leur octroyones que les autres subventions que ils nous ont faites ne leur facent nul prejudice es choses esquelles ils n'étoient tenus ne par ce nul nouveau droit ne nous soit acquis ne amenuisié —Ordonnance de 1304, apud Mably l iv c 3 note 5 See other authorities in the same place

[z] Liutprand King of the Lombards says that his laws sibi placuisse unà cum omnibus judicibus de Austriæ et Neustriæ partibus et de Tusciæ finibus cum reliquis fidelibus meis Langobardis, et omni populo assistente —Muratori, Dissert. 22.

consequence of the paucity of Franks settled there, was hardly connected politically with any section of it, there does not seem an improbability that the subjects of a king of Paris or Soissons might have been numerously present in those capitals It is generally allowed that they attended with annual gifts to their sovereign, though perhaps these were chiefly brought by the beneficiary tenants and wealthy allodialists We certainly find expressions, some of which I have quoted, indicating a popular assent to the resolutions taken or laws enacted, in the Field of March Perhaps the most probable hypothesis may be that the presence of the nation was traditionally required in conformity to the ancient German usage, which had not been formally abolished, while the difficulty of prevailing on a dispersed people to meet every year, as well as the enhanced influence of the king through his armed Antrustiones, soon reduced the freemen to little more than spectators from the neighboring districts We find indeed that it was with reluctance and by means of coercive fines that they were induced to attend the *mallus* of their count for judicial purposes [c]

Although no legislative proceedings of the Merovingian line are extant after 615 it is intimated by early writers that Pepin Heristal and his son Charles Martel restored the national council after some interruption, and if the language of certain historians be correct, they rendered it considerably popular [d]

Pepin the younger, after his accession to the throne changed the month of this annual assembly from March to May, and we have some traces of what took place at eight sessions during his reign [e] Of his capitularies however one only is said to be made *in generali populi conventu* the rest are enacted in synods of bishops and all without exception relate merely to ecclesiastical affairs [f] And it must be owned that as in those

c Mably generally strives to make the most of any vestige of popular government and Sismondi is not exempt from a similar bias He overrates the liberties of the Franks Leurs ducs et leurs comtes étaient élective leurs generaux etaient choisis par les soldats leurs grands juges ou maires par les hommes libres (vol p 87) But no part of these privileges can be inferred from the existing histories or other documents The dukes and counts were as we find by Marculfus and other evidence solely appointed by the crown A great deal of personal liberty may have been preserved by means of the local assemblies of the Franks but we find in the general government only the preponderance of the kings during one period and that of the aristocracy during another

d The first of these Austrasian dukes say the Annals of Metz Dagus anno Kalendis Martiis generale cum omnibus Francis secundum priscorum consuetudinem conciliabulum agebat The second according to the biographer of St Salvian— jussit campum magnum parari sicut mos erat Francorum Venerunt autem optimates et magistratus omnisque populus See the quotations in Guizot (Essais sur l'Histoire de France p 3)

e Essais sur l'Histoire de France p 3–4.

f Rec. des Hist v 637

of the first dynasty, we find generally mention of the optimates who met in these conventions, but rarely any word that can be construed of ordinary freemen

Such, indeed, is the impression conveyed by a remarkable passage of Hincmar, Archbishop of Rheims, during the time of Charles the Bald, who has preserved, on the authority of a writer contemporary with Charlemagne, a sketch of the Frankish government under that great prince Two assemblies (placita) were annually held In the first, all regulations of importance to the public weal for the ensuing year were enacted, and to this, he says the whole body of clergy and laity repaired, the greater, to deliberate upon what was fitting to be done, and the less, to confirm by their voluntary assent, not through deference to power, or sometimes even to discuss, the resolutions of their superiors *g* In the second annual assembly the chief men and officers of state were alone admitted, to consult upon the most urgent affairs of government They debated, in each of these, upon certain capitularies, or short proposals, laid before them by the king The clergy and nobles met in separate chambers, though sometimes united for the purposes of deliberation In these assemblies, principally, I presume, in the more numerous of the two annually summoned, that extensive body of laws, the capitularies of Charlemagne, were enacted And though it would contradict the testimony just adduced from Hincmar, to suppose that the lesser freeholders took a very effective share in public councils, yet their presence, and the usage of requiring their assent, indicate the liberal principles upon which the system of Charlemagne was founded It is continually expressed in his capitularies and those of his family that they were enacted by general consent *h* In one of Louis the Debonair, we even trace the

g Consuetudo t nc temporis talis erat ut non sæp us sed b s in anno plac ta d io tenerentur Unum quando ord na l atur statis tot us regni ad anni ver tentis spat um quod ord natum nullus eventus rerum nisi summa necess tas quæ sim l ter toti regno incumbebat mutabat In quo plac to generalitas universorum majorum tam cler corum q iam la corum conven ebat seniores propter consil um ord nandum m no res propter idem cons l i m susc p en dum et interdum par ter tractandum et non ex potestate sed ex proprio mentis intellectu vel sententiâ con firmand m Hincmar Ep st 5 de or dine palat i I have not translated the word majorum in the above quotation not apprehending its sense [Note XVI]

h Cap tula quæ præter to anno legi Sal ce cum omn um consensu addenda esse consu mus (A D 801) Ut popu lus interrogetur de capitul s quæ in lege nov ter add ta sunt et postquam omnes consenser nt subscript ones et manu firmat ones suas in ips s cap tul s fa c ant (A D 813) Cap tular a patr s nostr quæ Franci pro lege tenenda jud caverunt (A D 837) I have b or rowed these quotat ons from Mably who remarks that the word *populus* s never used in the earl er laws See too Du Cange vv Lex Mallum Pactum

first germ of representative legislation. Every count is directed to bring with him to the general assembly twelve Scabini, if there should be so many in his county, or, if not, should fill up the number out of the most respectable persons resident *i* These Scabini were judicial assessors of the count, chosen by the allodial proprietors, in the county court, or mallus, though generally on his nomination *j*

The circumstances, however, of the French empire for several subsequent ages were exceedingly adverse to such enlarged schemes of polity. The nobles contemned the imbecile descendants of Charlemagne, and the people, or lesser freeholders, if they escaped absolute villenage, lost their immediate relation to the supreme government in the subordination to their lord established by the feudal law Yet we may trace the shadow of ancient popular rights in one constitutional function of high importance, the choice of a sovereign Historians who relate the election of an emperor or king of France seldom omit to specify the consent of the multitude, as well as of the temporal and spiritual aristocracy, and even in solemn instruments that record such transactions we find a sort of importance attached to the popular suffrage *k* It is surely less

i Vult dominus Imperator ut in tale placitum quale ille nunc jusserit veniat unusquisque comes et adducat secum duodecim scabinos si tanti fuerint, sin autem de melioribus hominibus illius comitatus suppleat numerum duodenarium Mably l ii c ii

j This seems to be sufficiently proved by Savigny (vol i p 192 *217 et post*) His opinion is adopted by Meyer Guizot, Grimm and Troja. The last of these has found Scabini mentioned in Lombardy as early as 724 though Savigny had rejected all documents in which they are named anterior to Charlemagne

The Scabini are not to be confounded as sometimes has been the case with the Rachimburgi who were not chosen by the allodial proprietors, but were themselves such or sometimes perhaps beneficiaries summoned by the court as jurors were in England They answered to the *prud hommes bons hommes* of later times they formed the county or the hundred court for the determination of civil and criminal causes [Note XVI]

k It has been intimated in another place p 156 that the French monarchy seems not to have been strictly hereditary under the later kings of the Merovingian race at least expressions indicating a formal election are frequently employed by historians. Pepin of course came in by the choice of the nation. At his death he requested the consent of the counts and prelates to the succession of his sons (Baluzii Capitularia p 187), though they had bound themselves by oath at his consecration never to elect a king out of another family Ut nunquam de alterius lumbis regem eligere præsumant. (Formula Consecrationis Hippini in Recueil des Historiens t v) In the instrument of partition by Charlemagne among his descendants he provides for their immediate succession in absolute terms without any mention of consent But in the event of the decease of one of his sons leaving a child whom the people shall choose the other princes were to permit him to reign Baluze p 440 This is repeated more perspicuously in the partition made by Louis I in 817 Si quis eorum decedens legitimos filios reliquerit non inter eos potestas ipsa dividatur sed potius populus pariter conveniens unum ex iis quem dominus voluerit eligat et hunc senior frater in loco fratris et filii recipiat Baluze p 577 Proofs of popular consent given to the succession of kings during the two next centuries are frequent but of less importance on account of the irregular condition of government Even after Hugh Capet's accession hereditary right was far from being established The first six kings of this dynasty procured the *coöptation* of their sons by having them crowned during their own lives. And this was not done without the consent of the

probable that a recognition of this elective right should have been introduced as a mere ceremony, than that the form should have survived after length of time and revolutions of government had almost obliterated the recollection of its meaning.

It must, however, be impossible to ascertain even the theoretical privileges of the subjects of Charlemagne, much more to decide how far they were substantial or illusory We can only assert in general that there continued to be some mixture of democracy in the French constitution during the reigns of Charlemagne and his first successors The primeval German institutions were not eradicated In the capitularies the consent of the people is frequently expressed Fifty years after Charlemagne, his grandson Charles the Bald succinctly expresses the theory of legislative power A law, he says, is made by the people's consent and the king's enactment[l] It would hardly be warranted by analogy or precedent to interpret the word people so very narrowly as to exclude any allodial proprietors, among whom, however unequal in opulence, no legal inequality of rank is supposed to have yet arisen

But by whatever authority laws were enacted, whoever were the constituent members of national assemblies, they ceased to be held in about seventy years from the death of Charlemagne The latest capitularies are of Carloman in 882[m] From

chief vassals. (Recueil des Hist. t. xi. p 133) In the reign of Robert it was a great question whether the elder son should be thus designated as heir in preference to his younger brother whom the queen, Constance was anxious to place upon the throne Odolric Bishop of Orleans writes to Fulbert, Bishop of Chartres in terms which lead one to think that neither hereditary succession nor primogeniture was settled on any fixed principle (Id t. x. p. 504.) And a writer in the same collection about the year 1000, expresses himself in the following manner Melius est electioni principis non subscribere quam post subscriptionem electum contemnere in altero enim libertatis amor laudatur in altero servilis contumacia probro datur Tres namque generales electiones novimus quarum una est regis vel imperatoris altera pontificis, altera abbatis Et primam quidem fact concordia totius regni secundum vero unanim tas civium et cleri tertiam sanius consilium cœnobiticæ congregationis. (Id p. 626.) At the coronation of Philip I in 1059, the nobility and people (milites et populi tam majores quam minores) testified their consent by crying Laudamus, volumus, fiat. T xi p. 33. I suppose, if search were made, that similar testimonies might be found still later and perhaps hereditary succession cannot be considered as a fundamental law till the reign of Philip Augustus, the era of many changes in the French constitution.

Sismondi has gone a great deal farther down, and observes that, though John assumed the royal power immediately on the death of his father in 1350, he did not take the name of king nor any seal but that of Duke of Normandy till his coronation He says however notre royaume in his instruments (x 375) Even Charles V called himself or was called by some Duke of Normandy until his coronation but all the lawyers called him king (xi. 6) The lawyers had established their maxim that the king never dies which however was unknown while any traces of elective monarchy remained

[l] Lex consensu populi fit const tutione regis. Recueil des Hist t vii p. 636.

[m] It is generally said that the capitularies cease with Charles the Simple, who died in 921 Put Baluze has published only two under the name of that prince the first a declaration of his queen's jointure the second an arbitration of disputes in the church of Tongres neither surely deserving the appellation of a law

this time there ensues a long blank in the history of French legislation The kingdom was as a great fief, or rather as a bundle of fiefs, and the king little more than one of a number of feudal nobles, differing rather in dignity than in power from some of the rest The royal council was composed only of barons, or tenants in chief, prelates, and household officers These now probably deliberated in private, as we hear no more of the consenting multitude Political functions were not in that age so clearly separated as we are taught to fancy they should be, this council advised the king in matters of government, confirmed and consented to his grants, and judged in all civil and criminal cases where any peers of their court were concerned *n* The great vassals of the crown acted for themselves in their own territories, with the assistance of councils similar to that of the king Such, indeed, was the symmetry of feudal customs, that the manorial court of every vavassor represented in miniature that of his sovereign *o*

But, notwithstanding the want of any permanent legislation during so long a period, instances occur in which the kings of France appear to have acted with the concurrence of an assembly more numerous and more particularly summoned than the royal council At such a congress held in 1146 the crusade of Louis VII was undertaken *p* We find also an ordinance of the same prince in some collections, reciting that he had convoked a general assembly at Soissons, where many prelates and barons then present had consented and requested that private wars might cease for the term of ten years *q* The famous

n Regali potentia in nullo abuti volentes says Hugh Capet omnia negotia re publicæ in consultatione et sententia fidelium nostrorum disponimus Recueil des Hist t x p 392 The subscriptions of these royal councillors were necessary for the confirmation or at least the authentication of charters as was also the case in England Spain and Italy This practice continued in England till the reign of John

The Curia regis seems to have differed only in name from the Concilium regium It is also called Curia parium from the equality of the barons who composed it standing in the same feudal degree of relation to the sovereign But we are not yet arrived at the subject of jurisdiction, which it is very difficult to keep distinct from what is immediately before us

o Recueil des Hist t xi p 300 and preface p 179. Vaissette Hist de Languedoc t ii p 508

p Velly t. iii p 119 This he observes is the first instance in which the word parliament is used for a deliberative assembly

q Ego Ludovicus Dei gratia Francorum rex, ad reprimendum fervorem malignantium et compescendum violentas prædorum manus postulationibus cleri et assensu baroniæ toti regno pacem constituimus Ea causa anno Incarnati Verbi 1155 iv idus Jun Suessionense concilium celebre aduna vimus et effuerunt archiepiscopi Remensis Senonensis et eorum suffragane item barones comes Flandrensis Trecensis et Nivernensis et quamplures alii et dux Burgundiæ Ex quorum beneplacito ordinavimus a veniente Pascha ad decem annos ut omnes ecclesæ regni et omnes agricolæ, etc pacem habeant et securitatem —In pacem istam juraverunt dux Burgundæ comes Flandriæ —— et reliqui barones qui aderant

This ordinance is published in Du Chesne, Scriptt Rerum Gallicarum t iv and in Recueil des Histor t xiv p 387 but not in the general collection

Saladine tithe was imposed upon lay as well as ecclesiastical revenues by a similar convention in 1188[r] And when Innocent IV, during his contest with the Emperor Frederic, requested an asylum in France, St Louis, though much inclined to favor him, ventured only to give a conditional permission, provided it were agreeable to his barons, whom, he said, a king of France was bound to consult in such circumstances Accordingly he assembled the French barons, who unanimously refused their consent[s]

It was the ancient custom of the kings of France as well as of England, and indeed of all those vassals who affected a kind of sovereignty, to hold general meetings of their barons, called Cours Plenieres, or Parliaments, at the great festivals of the year These assemblies were principally intended to make a display of magnificence, and to keep the feudal tenants in good humor, nor is it easy to discover that they passed in anything but pageantry[t] Some respectable antiquaries have however been of opinion that affairs of state were occasionally discussed in them, and this is certainly by no means inconsistent with probability, though not sufficiently established by evidence[u]

Excepting a few instances, most of which have been mentioned, it does not appear that the kings of the house of Capet acted according to the advice and deliberation of any national assembly, such as assisted the Norman sovereigns of England nor was any consent required for the validity of their edicts, except that of the ordinary council, chiefly formed of their household officers and less powerful vassals This is at first sight very remarkable For there can be no doubt that the government of Henry I or Henry II was incomparably stronger than that of Louis VI or Louis VII But this apparent absoluteness of the latter was the result of their real weakness and the disorganization of the monarchy The peers of France were *infrequent in their attendance upon the king's* council because they denied its coercive authority It was a fundamental principle that every feudal tenant was so far sovereign within the limits of his fief that he could not be bound by any law without his consent The king, says St Louis in his Establishments, cannot make proclamation, that is, declare

[r] Velly t iii p 315
[s] Ibid t v p 306.
[t] Du Cange Dissert. 5 sur Joinville
[u] Mém de l Acad des Inscript t. xli. Recueil des Hist. t. x preface p 155

place he says, with more positiveness, that "the king is sovereign above all, and has of right the general custody of the realm, for which cause he may make what ordinances he pleases for the common good, and what he ordains ought to be observed, nor is there anyone so great but may be drawn into the king's court for default of right or for false judgment, or in matters that affect the sovereign" [d] These latter words give us a clue to the solution of the problem by what means an absolute monarchy was established in France For though the barons would have been little influenced by the authority of a lawyer like Beaumanoir, they were much less able to resist the coercive logic of a judicial tribunal It was in vain for them to deny the obligation of royal ordinances within their own domains, when they were compelled to acknowledge the jurisdiction of the parliament of Paris, which took a very different view of their privileges This progress of the royal jurisdiction will fall under the next topic of inquiry and is only now hinted at, as the probable means of confirming the absolute legislative power of the French crown

The ultimate source, however, of this increased authority will be found in the commanding attitude assumed by the kings of France from the reign of Philip Augustus, and particularly in the annexation of the two great fiefs of Normandy and Toulouse Though the châtelains and vavassors who had depended upon those fiefs before their reunion were, agreeably to the text of St Louis's ordinance fully sovereign in respect of legislation within their territories yet they were little competent and perhaps little disposed, to offer any opposition to the royal edicts and the same relative superiority of force which had given the first kings of the house of Capet a tolerably effective control over the vassals dependent on Paris and Orleans while they hardly pretended to any over Normandy and Toulouse was now extended to the greater part of the kingdom St Louis in his scrupulous moderation, forbore to avail himself of all the advantages presented by the circumstances of his reign and his Establishments bear testimony to a state of political society which even at the moment

d C. 31. Beaumanoir uses in one place still stronger language about the royal authority The king he says may annul the releases of debts made by any one who accompanies him in military service so that he may exercise them again "for what it pleases him to do ought to be held as law" (c. 30) This I owe to the new edition of the Coutumes de Beaumanoir by M Beugnot 1842.

of their promulgation, was passing away The next thirty years after his death, with no marked crisis, and with little disturbance, silently demolished the feudal system such as had been established in France during the dark confusion of the tenth century Philip the Fair, by help of his lawyers and his financiers, found himself, at the beginning of the fourteenth century, the real master of his subjects *e*

There was, however, one essential privilege which he could not hope to overturn by force, the immunity from taxation enjoyed by his barons This, it will be remembered, embraced the whole extent of their fiefs, and their tenantry of every description, the king having no more right to impose a tallage upon the demesne towns of his vassals than upon themselves Thus his resources, in point of taxation, were limited to his own domains, including certainly, under Philip the Fair, many of the noblest cities in France, but by no means sufficient to meet his increasing necessities We have seen already the expedients employed by this rapacious monarch—a shameless depreciation of the coin and, what was much more justifiable, the levying taxes within the territories of his vassals by their consent Of these measures, the first was odious, the second slow and imperfect Confiding in his sovereign authority—though recently, yet almost completely, established—and little apprehensive of the feudal principles, already grown obsolete and discountenanced, he was bold enough to make an extraordinary innovation in the French constitution This was the convocation of the States General a representative body, composed of the three orders of the nation *f* They were first convened in 1302, in order to give more weight to the king's cause in his great quarrel with Boniface VIII , but their earliest grant of a subsidy is in 1314 Thus the nobility surrendered

e The reign of Philip the Fair has been very well discussed by Mably Simond and Guizot. He changed says the last monarchy into despotism but he was not one of those despots who employ their absolute power for the public good On ne rencontre dans tout le cours de son regne aucune idee generale et qui s'y rapporte au bien de ses sujets c'est un despote égoiste devoue a lui meme qui regne pour lui seul (Leçon 45) The royal authority gained so much ascendency in his reign that while we have only 50 ordonnances of St Louis in forty two years we have 334 of Philip IV in about thirty

f It is almost unanimously agreed among French writers that Philip the Fair first introduced a representation of the towns into his national assembly of States General Nevertheless the Chronicles of St. Denis and other historians of rather a late date assert that the deputies of towns were present at a parliament in 1241 to advise the king what should be done in consequence of the Count of Angoulemes refusal of homage Boulainvilliers Hist. de l'ancien Gouvernement de France t. i p 20 Villaret t. ix p 129 The latter pretends even that they may be traced a century farther back on voit deja les gens de bonnes villes assister

upon which the States under John solely relied for securing the redress of grievances was that of granting money, and of regulating its collection The latter, indeed, though for convenience it may be devolved upon the executive government, appears to be incident to every assembly in which the right of taxation resides That, accordingly, which met in 1355 nominated a committee chosen out of the three orders which was to sit after their separation and which the king bound himself to consult not only as to the internal arrangements of his administration but upon every proposition of peace or armistice with England Deputies were despatched into each district to superintend the collection and receive the produce of the subsidy granted by the States *o* These assumptions of power would not long we may be certain have left the sole authority of legislation in the king and might perhaps be censured as usurpation if the peculiar emergency in which France was then placed did not furnish their defence But if it be true that the kingdom was reduced to the utmost danger and exhaustion as much by malversation of its government as by the armies of Edward III , who shall deny to its representatives the right of ultimate sovereignty and of suspending at least the royal prerogatives by the abuse of which they were falling into destruction? *p* I confess that it is exceedingly difficult or perhaps impracticable with such information as we possess to decide upon the motives and conduct of the States General in their several meetings before and after the battle of Poitiers Arbitrary power prevailed and its opponents became of course the theme of obloquy with modern historians Froissart however does not seem to impute any fault to these famous assemblies of the States General and still less a more contemporary historian the anonymous continuator of Nangis Their notices however are very slight and our chief knowledge of the parliamentary history of France if I may employ the expression must be collected from

leg slat ve author ty w th the crown or even a consent ng vo ce Mably Boula nv ers and Montlos er a e as decve on th s subject as the most courtly wr e s of that country It follows as a just consequence that F ance ne er possessed a free const tut on nor had the monarchy any l m tat ons n re pect of enact ng laws ve those wh ch unt l the re gn of Ih p the Fa r, the feudal princ ples had mposed

o Ordonnances des Ro s, t p 21 and préface p 4— Th s preface by M Sécousse the ed tor g ves a very clear v ew of the general and prov nc al assemb es held n the re gn of John Boula nv l ers, H st. de l Anc en Gouvernement de France t or V llaret t x may be perused w h advantage

p The second cont n ator of Nangis in the Sp c legium dwe s on the heavy taxes d m nut on of money and gen eral oppress veness of government n th s age t i i. p 108.

the royal ordinances made upon these occasions, or from unpublished accounts of their transactions. Some of these, which are quoted by the later historians, are, of course, inaccessible to a writer in this country. But a manuscript in the British Museum, containing the early proceedings of that assembly which met in October, 1356, immediately after the battle of Poitiers, by no means leads to an unfavorable estimate of its intentions [q] The tone of their representations to the Duke of Normandy (Charles V., not then called Dauphin) is full of loyal respect; their complaints of bad administration, though bold and pointed, not outrageous; their offers of subsidy liberal. The necessity of restoring the coin is strongly represented as the grand condition upon which they consented to tax the people, who had been long defrauded by the base money of Philip the Fair and his successors.[r]

But whatever opportunity might now be afforded for establishing a just and free constitution in France was entirely lost. Charles, inexperienced and surrounded by evil counsellors, thought the States-General inclined to encroach upon his rights, of which, in the best part of his life, he was always abundantly careful He dismissed, therefore, the assembly, and had recourse to the easy but ruinous expedient of debasing

[q] Cotton MSS Titus, t xii fol 58-74. This manuscript is noticed, as an important document in the preface to the third volume of Ordonnances, p. 48, by M Secousse, who had found it mentioned in the Bibliothèque Historique of Le Long No 11,242 No French antiquary appears, at least before that time, to have seen it, but Boulainvilliers conjectured that it related to the assembly of States in February, 1356 (1357), and M Sécousse supposed it rather to be the original journal of the preceding meeting in October 1356 from which a copy found among the manuscripts of Dupuy, and frequently referred to by Sécousse himself in his preface, had been taken M Sécousse was perfectly right in supposing the manuscript in question to relate to the proceedings of October, and not of February, but it is not an original instrument. It forms part of a small volume written on vellum, and containing several other treatises It seems, however as far as I can judge, to be another copy of the account which Dupuy possessed, and which Sécousse so often quotes, under the name of Procès-verbal.

It is singular that Sismondi says (x 479), with Sécousse before his eyes that the *procès-verbaux* of the States General in 1356, are not extant

[r] Et estoit et est l entente de ceulx qui a la dite convocation estoient, que quelconque ottroy ou ayde qu ils feissent ils eussent bonne monnoye et estable selon l advis des trois estats, et que les chartres et lettres faites pour les reformations du royaume par le roy Philippe le Bel et toutes celles qui furent faites par le roy notre seigneur qui est a present, fussent confirmées, enterinées, tenues, et gardées de point en point, et toutes les aides quelconques qui faites soient fussent recues et distribuées par ceulx qui soient a ce commis par les trois estats et autorisées par M le Duc, et sur certaines autres conditions et modifications justes et raissonables prouffitables, et semble que ceste aide eust eté moult grant et moult prouffitable, et trop plus que aides de fait de monnoye Car elle se feroit de volonté du peuple et consentement comun selon Dieu et selon conscience: Et le prouffit que on prent et veult on prendre sur le fait de la monnoye du quel on veult faire le fait de la guerre, et ce soit a la destruction et a esté au temps passé du roy et du royaume et des subjets, Et si se destruit le billon tant par fontures et blanchis comme autrement, ne le fait ne peust durer longuement qu il ne vienne a destruction si on continue longuement, Et si est tout certain que les gens d armes ne vouldroient estre contens de leurs gaiges par foible monnoye, &c

the coin This led to seditions at Paris, by which his authority, and even his life, were endangered In February, 1357, three months after the last meeting had been dissolved, he was obliged to convoke the States again, and to enact an ordinance conformable to the petitions tendered by the former assembly [s] This contained many excellent provisions, both for the redress of abuses and the vigorous prosecution of the war against Edward, and it is difficult to conceive that men who advised measures so conducive to the public weal could have been the blind instruments of the King of Navarre But this, as I have already observed, is a problem in history that we cannot hope to resolve It appears, however, that, in a few weeks after the promulgation of this ordinance, the proceedings of the reformers fell into discredit, and their commission of thirty six, to whom the collection of the new subsidy, the redress of grievances, and, in fact, the whole administration of government had been intrusted, became unpopular The subsidy produced much less than they had led the people to expect: briefly, the usual consequence of democratical emotions in a monarchy took place Disappointed by the failure of hopes unreasonably entertained and improvidently encouraged, and disgusted by the excesses of the violent demagogues, the nation, especially its privileged classes, who seem to have concurred in the original proceedings of the States General, attached themselves to the party of Charles, and enabled him to quell opposition by force [t] Marcel, provost of the traders, a municipal magistrate of Paris, detected in the overt execution of a traitorous conspiracy with the King of Navarre, was put to death by a private hand Whatever there had been of real patriotism in the States-General, artfully confounded, according to the practice of courts, with these schemes of disaffected men, shared in the common obloquy, whatever substantial reforms had been projected the government threw aside as seditious innovations Charles who had assumed the title of regent, found in the States General assembled at Paris, in 1359 a very different disposition from that which their predecessors had displayed, and publicly restored all counsellors whom in the former troubles he had been compelled to discard Thus the monarchy resettled itself on

[s] Ordonnances des Rois t iii p. 121
[t] D accord à mots illi tres status ab incepto propos to cessaverunt Ex tun en m regni negotia male ire &c Continuator Col de Nangis in Spicilegio, t iii p. 115.

its ancient basis, or, more properly, acquired additional stability [u]

Both John, after the peace of Bretigni, and Charles V imposed taxes without consent of the States-General [v] The latter, indeed, hardly ever convoked that assembly Upon his death the contention between the crown and representative body was renewed, and, in the first meeting held after the accession of Charles VI, the government was compelled to revoke all taxes illegally imposed since the reign of Philip IV [A D 1380] This is the most remedial ordinance, perhaps, in the history of French legislation "We will, ordain, and grant" says the king, "that the aids, subsidies, and impositions, of whatever kind, and however imposed, that have had course in the realm since the reign of our predecessor, Philip the Fair, shall be repealed and abolished, and we will and decree that, by the course which the said impositions have had, we or our successors shall not have acquired any right, nor shall any prejudice be wrought to our people, nor to their privileges and liberties, which shall be reestablished in as full a manner as they enjoyed them in the reign of Philip the Fair, or at any time since, and we will and decree that, if anything has been done contrary to them since that time to the present hour, neither we nor our successors shall take any advantage therefrom' [w] If circumstances had turned out favorably for the cause of liberty, this ordinance might have been the basis of a free constitution, in respect, at least, of immunity from arbitrary taxation But the coercive measures of the court and tumultuous spirit of the Parisians produced an open quarrel, in which the popular party met with a decisive failure

It seems, indeed, impossible that a number of deputies, elected merely for the purpose of granting money, can possess that weight, or be invested in the eyes of their constituents with that awfulness of station which is required to withstand the royal authority The States General had no right of redressing abuses, except by petition, no share in the exercise

[u] A very full account of these transactions is given by Secousse in his History of Charles the Bad p 107 and in his preface to the third volume of the Ordonnances des Rois The reader must make allowance for the usual partialities of a French historian where an opposition to the reigning prince is his subject. A contrary bias is manifested by Boulainvilliers and Mably whom however, it is well worth while to hear

[v] Mably l v c 5 note 5

[w] Ordonnances des Rois t vi p 564 The ordinance is long containing frequent repetitions and a great redundance of words intended to give more force or at least solemnity

From provincial assemblies, composed of the three orders, they usually obtained more money than they could have extracted from the common representatives of the nation and heard less of remonstrance and demand [a] Languedoc in particular had her own assembly of states, and was rarely called upon to send deputies to the general body, or representatives of what was called the Languedoil But Auvergne, Normandy, and other provinces belonging to the latter division, had frequent convocations of their respective estates during the intervals of the States General—intervals which by this means were protracted far beyond that duration to which the exigencies of the crown would otherwise have confined them [b] This was one of the essential differences between the constitutions of France and England, and arose out of the original disease of the former monarchy—the distraction and want of unity consequent upon the decline of Charlemagne's family, which separated the different provinces, in respect of their interests and domestic government, from each other

But the formality of consent whether by general or provincial states, now ceased to be reckoned indispensable The lawyers had rarely seconded any efforts to restrain arbitrary power in their hatred of feudal principles, especially those of territorial jurisdiction, every generous sentiment of freedom was proscribed, or, if they admitted that absolute prerogative might require some checks it was such only as themselves not the national representatives should impose Charles VII levied money by his own authority Louis XI carried this encroachment to the highest pitch of exaction It was the boast of courtiers that he first released the kings of France from dependence (*hors de page*) or, in other words that he effectually demolished those barriers which however imperfect and ill placed had imposed some impediment to the establishment of despotism [c]

The exactions of Louis however, though borne with pa-

[a] Villaret, t. xl. p. 370.

[b] Ordonnances des Rois, t. i. préface.

[c] The preface to the sixteenth volume of Ordonnances before quoted, displays a lamentable picture of the internal situation of France in consequence of excessive taxation and other abuses. These evils in a less aggravated degree continued ever since to retard the improvement and diminish the intrinsic prosperity of a country so extraordinarily endowed with natural advantages. Philip de Comines was forcibly struck with the different situation of England and the Netherlands. And Sir John Fortescue has a remarkable passage on the poverty and servitude of the French commons contrasted with English freemen—Difference of Limited and Absolute Monarchy, p. 17.

tience, did not pass for legal with those upon whom they pressed Men still remembered their ancient privileges, which they might see with mortification well preserved in England. "*There is no monarch or lord upon earth* [says Philip de Comines, himself bred in courts] who can raise a farthing upon his subjects, beyond his own domains, without their free concession, except through tyranny and violence. It may be objected that in some cases there may not be time to assemble them, and that war will bear no delay, but I reply (he proceeds) that such haste ought not to be made, and there will be time enough, and I tell you that princes are more powerful, and *more dreaded by their enemies*, when they undertake anything with the consent of their subjects" [d]

The States General met but twice during the reign of Louis XI, and on neither occasion for the purpose of granting money But an assembly in the first year of Charles VIII, the States of Tours in 1484 is too important to be overlooked, as it marks the last struggle of the French nation by its legal representatives for immunity from arbitrary taxation

A warm contention arose for the regency upon the accession of Charles VIII, between his aunt, Anne de Beaujeu, whom the late king had appointed by testament, and the princes of the blood, at the head of whom stood the Duke of Orleans, afterwards Louis XII The latter combined to demand a convocation of the States-General which accordingly took place The king's minority and the factions at court seemed no unfavorable omens for liberty But a scheme was artfully contrived which had the most direct tendency to break the force of a popular assembly The deputies were classed in six nations, who debated in separate chambers and consulted each other only upon the result of their respective deliberations It was easy for the court to foment the jealousies natural to such a partition Two nations the Norman and Burgundian asserted that the right of *providing for the regency* devolved in the king's minority upon the States General a claim of great boldness and certainly not much founded upon precedents In virtue of this they proposed to form a council not only of the princes but of certain deputies to be elected by the six nations who composed the States But the other four, those of Paris Aquitaine Languedoc, and Languedoil (which last

[d] Mém. de Comines, L. iv. c. 19.

comprised the central provinces) rejected this plan from which the two former ultimately desisted and the choice of councillors was left to the princes

A firmer and more unanimous spirit was displayed upon the subject of public reformation The tyranny of Louis XI had been so unbounded that all ranks agreed in calling for redress and the new governors were desirous at least by punishing his favorites to show their inclination towards a change of system They were very far however from approving the propositions of the States General These went to points which no court can bear to feel touched though there is seldom any other mode of redressing public abuses the profuse expense of the royal household the number of pensions and improvident grants the excessive establishment of troops The States explicitly demanded that the taille and all other arbitrary imposts should be abolished and that from thenceforward according to the natural liberty of France no tax should be levied in the kingdom without the consent of the States It was with great difficulty and through the skilful management of the court that they consented to the collection of the taxes payable in the time of Charles VII with the addition of one fourth as a gift to the king upon his accession This subsidy they declare to be granted by way of gift and concession and not otherwise and so as no one should from thenceforward call it a tax but a gift and concession And this was only to be in force for two years after which they stipulated that another meeting should be convoked But it was little likely that the government would encounter such a risk and the princes whose factious views the States had by no means seconded felt no temptation to urge again their convocation No assembly in the annals of France seems notwithstanding some party selfishness arising out of the division into nations to have conducted itself with so much public spirit and moderation nor had that country perhaps ever so fair a prospect of establishing a legitimate constitution *e*

5 The right of jurisdiction has undergone changes in France and in the adjacent countries still more remarkable than those

e I am altogether indebted to Garnier for the proceedings of the States of Tours. His account (Hist de France t. xv p 54 348) is extremely copious and derived from a manuscript journal Comines alludes to them some mes but with little particularity The above mentioned manuscript was published in 835 among the Documens Inédits sur l'Histoire de France

of the legislative power; and passed through three very distinct stages as the popular, aristocratic, or regal influence predominated in the political system The Franks, Lombards, and Saxons seem alike to have been jealous of judicial authority, and averse to surrendering what concerned every man's private right out of the hands of his neighbors and his equals Every ten families are supposed to have had a magistrate of their own election: the tithingman of England, the decanus of France and Lombardy[f] Next in order was the centenarius or Hundredary, whose name expresses the extent of his jurisdiction, and who, like the decanus, was chosen by those subject to it[g] But the authority of these petty magistrates was gradually confined to the less important subjects of legal inquiry No man, by a capitulary of Charlemagne, could be impleaded for his life, or liberty, or lands, or servants, in the hundred court[h] In such weighty matters, or by way of appeal from the lower jurisdictions, the count of the district was judge He indeed was appointed by the sovereign, but his power was checked by assessors, called Scabini, who held their office by the election, or at least the concurrence, of the people[i] An ultimate appeal seems to have lain to the Count Palatine, an officer of the royal household, and sometimes causes were decided by the sovereign himself[j] Such was the original model of judicature, but as complaints of injustice and neglect were frequently made against the counts, Charlemagne,

[f] The Decanus is mentioned by a writer of the ninth age as the lowest species of judge immediately under the Centenarius The latter is compared to the Plebanus or priest of a church where baptism was performed and the former to an inferior presbyter Du Cange v Decanus and Muratori Antiq Ital Dissert. 10

[g] It is evident from the Capitularies of Charlemagne (Baluze t. i p 426, 466) that the Centenarii were elected by the people that is I suppose the freeholders

[h] Ut nullus homo in placito centenarii neque ad mortem neque ad libertatem suam amittendam aut ad res reddendas vel mancipia judicetur Sed ista aut in presentia comitis vel missorum nostrorum judicentur Capit. A D 812 Baluz p 497

[i] Baluzii Capitularia p 466 Muratori Dissert. 10 Du Cange v Scabini These Scabini may be traced by the light of charters down to the eleventh century Recueil des Historiens t vi préface p 186. There is in particular a decisive proof of their existence in 918 in a record which I have already had occasion to quote Vaissette Hist de Languedoc, t ii Appendix p 56 Du Cange Baluze and other antiquaries have confounded the Scabini with the Rachimburgii of whom we read in the oldest laws But Savigny and Guizot have proved the latter were landowners acting in the county courts as judges under the presidency of the count but wholly independent of him. The Scabini in Charlemagne's age superseded them.—Essais sur l'Histoire de France pp 259 272

[j] Du Cange Dissertation 14, sur Joinville, and Glossary v Comites Palatini Mem de l'Acad des Inscript t xxx p 590. Louis the Debonair gave one day in every week for hearing causes but his subjects were required not to have recourse to him unless where the Missi or the counts had not done justice Baluze t. i p 668. Charles the Bald expressly reserves an appeal to himself from the inferior tribunals Capit. 869 t ii p 215 In his reign there was at least a claim to sovereignty preserved

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[i] Baluzii Capitularia p 466 Muratori D ssert 10 Du Cange v Scabini These Scabini may be traced by the light of charters down to the eleventh century Recueil des Historiens t vi préface p 1°6. There is, in particular a decisive proof of their existence in 918 in a record which I have already had occasion to quote Vaissette Hist de Languedoc, t ii Appendix p 56. Du Cange Baluze and other antiquaries have confounded the Scabini with the Rachimburgii of whom we read in the oldest laws But Savigny and Guizot have proved the latter were landowners acting in the county courts as judges under the presidency of the count, but wholly independent of him The Scabini in Charlemagne's age superseded them —Essais sur l Histoire de France pp 259 272

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Several customs rendered these rights of jurisdiction far less instrumental to tyranny than we might infer from their extent While the counts were yet officers of the crown, they frequently appointed a deputy, or viscount, to administer justice Ecclesiastical lords, who were prohibited by the canons from inflicting capital punishment, and supposed to be unacquainted with the law followed in civil courts, or unable to enforce it, had an officer by name of advocate, or vidame, whose tenure was often feudal and hereditary The viguiers (vicarii), bailiffs, provosts, and seneschals of lay lords were similar ministers, though not in general of so permanent a right in their offices, or of such eminent station, as the advocates of monasteries It seems to have been an established maxim, at least in later times, that the lord could not sit personally in judgment, but must intrust that function to his bailiff and vassals [r] According to the feudal rules, the lord's vassals or peers of his court were to assist at all its proceedings "There are some places," says Beaumanoir, "where the bailiff decides in judgment, and others where the vassals of the lord decide But even where the bailiff is the judge, he ought to advise with the most prudent, and determine by their advice, since thus he shall be most secure if an appeal is made from his judgment" [s] And indeed the presence of these assessors was so essential to all territorial jurisdiction, that no lord, to whatever rights of justice his fief might entitle him, was qualified to exercise them, unless he had at least two vassals to sit as peers in his court [t]

These courts of a feudal barony or manor required neither the knowledge of positive law nor the dictates of natural sagacity In all doubtful cases, and especially where a crime not capable of notorious proof was charged, the combat was award

siti in suo loco, licet nullam aliam jurisdictionem criminalem habeat. Du Cange voc. Fame necare

It is remarkable that the Neapolitan barons had no criminal jurisdiction at least of the higher kind till the reign of Alfonso in 1443 who sold this destructive privilege at a time when it was almost abolished in other kingdoms. Giannone l xxii c 5 and l xxvi c. 6

[r] Boutillier in his Somme Rurale written near the end of the fourteenth century asserts this positively Il convient quilz facent jugier par sultre que par eulx cest a savoir par leurs hommes feudaulx a leur semonce et conjurd [t] ou de leur baillif ou lieutenant et ont ressort a leur souverain Fol 3.

[s] Coutumes de Beauvoisis, p 11

[t] It was lawful in such case, to borrow the vassals of the superior lord Thaumassiere sur Beaumanoir p 375 See Du Cange v Pares, an excellent article and Tacitum

In England a manor is extinguished at least as to jurisdiction when there are not two freeholders subject to escheat left as suitors to the court baron Their tenancy must therefore have been created before the statute of Quia Emptores 18 Edw I (1290) since which no new estate in fee-simple can be held of the lord nor consequently be liable to escheat to him

ed, and God, as they deemed, was the judge [u] The nobleman fought on horseback, with all his arms of attack and defence; the plebeian on foot, with his club and target The same were the weapons of the champions to whom women and ecclesiastics were permitted to intrust their rights [v] If the combat was intended to ascertain a civil right, the vanquished party of course forfeited his claim and paid a fine If he fought by proxy, the champion was liable to have his hand struck off; a regulation necessary, perhaps, to obviate the corruption of these hired defenders In criminal cases the appellant suffered, in the event of defeat, the same punishment which the law awarded to the offence of which he accused his adversary [w] Even where the cause was more peaceably tried, and brought to a regular adjudication by the court, an appeal for false judgment might indeed be made to the suzerain, but it could only be tried by battle [x] And in this, the appellant, if he would impeach the concurrent judgment of the court below, was compelled to meet successively in combat every one of its members; unless he should vanquish them all within the day, his life, if he escaped from so many hazards, was forfeited to the law If fortune or miracle should make him conqueror in every contest, the judges were equally subject to death, and their court forfeited their jurisdiction forever A less perilous mode of appeal was to call the first judge who pronounced a hostile sentence into the field If the appellant came off victorious in this challenge, the decision was reversed, but the court was not impeached [y] But for denial of justice, that is for a refusal to try his suit, the plaintiff repaired to the court of the next supe-

[u] Trial by combat does not seem to have established itself completely in France till ordeals went into disuse which Charlemagne rather encouraged and which in his age the clergy for the most part approved The former species of decision may however be met with under the first Merovingian kings (Greg Turon l vi c 19 l x c. 10) and seems to have prevailed in Burgundy It is established by the laws of the Alemanni or Suabians Baluz t i p. 80. It was always popular in Lombardy Liutprand King of the Lombards says in one of his laws Incerti sumus de judicio Dei et quosdam autem divimus per pugnam sine justa causâ suam causam perdere Sed propter consuetudinem gentis nostræ Langobardorum legem impiam vetare non possumus. Muratori Scr pt Rerum Italicarum, t. ii p. 65. Otho II established it in all disputes concerning real property and there is a famous case where the right of representation or preference of the son of a deceased elder child to his uncle in succession to his grandfather's estate was settled by this test

[v] For the ceremonies of trial by combat see Houard Anciennes Loix Françoises t. i p. 264 Velly t vi p 106 Recueil des Historiens t xi préface p 189 Du Cange v Duellum The great original authorities are the Assises de Jerusalem c. 104, and Beaumanoir, c 31

[w] Beaumanoir, p 315

[x] Id c. 61 In England the appeal for false judgment to the king's court was not tried by battle Glanvil l. xii. c. 7

[y] Id. c. 61

violence, which had forwarded the encroachments of the ecclesiastical courts, was now manifested in those of the king Philip Augustus, by a famous ordinance in 1190, first established royal courts of justice, held by the officers called bailiffs or seneschals, who acted as the king's lieutenants in his domains [g] Every barony, as it became reunited to the crown, was subjected to the jurisdiction of one of these officers, and took the name of a bailliage or seneschaussee, the former name prevailing most in the northern, the latter in the southern, provinces The vassals whose lands depended upon, or, in feudal language, moved, from the superiority of this fief, were obliged to submit to the ressort or supreme appellant jurisdiction of the royal court established in it * This began rapidly to encroach upon the feudal rights of justice In a variety of cases, termed royal, the territorial court was pronounced incompetent, they were reserved for the judges of the crown, and, in every case, unless the defendant excepted to the jurisdiction, the royal court might take cognizance of a suit, and decide it in exclusion of the feudal judicature [h] The nature of cases reserved under the name of royal was kept in studied ambiguity, under cover of which the judges of the crown perpetually strove to multiply them Louis X, when requested by the barons of Champagne to explain what was meant by royal causes, gave this mysterious definition Everything which by right or custom ought exclusively to come under the cognizance of a sovereign prince [i] Vassals were permitted to complain in the first instance to the king's court of injuries committed by their lords These rapid and violent encroachments left the nobility no alternative but armed combinations to support their remonstrances Philip the Fair bequeathed to his successor the task of appeasing the storm which his own administration had excited Leagues were formed in most of the northern provinces for the redress of grievances, in which the third estate oppressed by taxation united with the vassals whose feudal privileges had been infringed Separate charters were granted to each of these confederacies by Louis Hutin, which contain many remedial provisions against the grosser violations of ancient rights, though the crown persisted in

[g] Ordonnances des Rois, t. i. p. 18. Du Cange v. Baliva. Mém. de l'Acad. des Inscriptions, t. xxx. p. 603. Mably, l. iv. c. 4. Boulainvilliers, t. ii. p. 22.

[h] Mably. Boulainvilliers. Montlosier, t. i. p. 104.

[i] Ordonnances des Rois, p. 606.

extant are of the year 1254. It was still, perhaps, in some degree ambulatory; but by far the greater part of its sessions in the thirteenth century were at Paris. The councillors nominated by the king, some of them clerks, others of noble rank, but not peers of the ancient baronage, acquired insensibly a right of suffrage [m]

An ordinance of Philip the Fair, in 1302, is generally supposed to have fixed the seat of parliament at Paris, as well as altered its constituent parts [n] Perhaps a series of progressive changes has been referred to a single epoch. But whether by virtue of this ordinance, or of more gradual events, the character of the whole feudal court was nearly obliterated in that of the Parliament of Paris A systematic tribunal took the place of a loose aristocratic assembly. It was to hold two sittings in the year, each of two months' duration; it was composed of two prelates, two counts, thirteen clerks, and as many laymen. Great changes were made afterwards in this constitution. The nobility, who originally sat there, grew weary of an attendance which detained them from war, and from their favorite pursuits at home. The bishops were dismissed to their necessary residence upon their sees [o] As they withdrew, a class of regular lawyers, originally employed, as it appears, in the preparatory business, without any decisive voice, came forward to the higher places, and established a complicated and tedious system of procedure, which was always characteristic of French jurisprudence.

They introduced at the same time a new theory of absolute power, and unlimited obedience. All feudal privileges were treated as encroachments on the imprescriptible rights of monarchy. With the natural bias of lawyers in favor of prerogative conspired that of the clergy, who fled to the king for refuge against the tyranny of the barons In the civil and canon laws a system of political maxims was found very uncongenial to the feudal customs The French lawyers of the fourteenth and

[m] Boulainvilliers t ii p 29 44, Mably, l iv c 2, Encyclopedie art. Parlement, Mem de l'Acad des Inscript t xxx p 603 The great difficulty I have found in this investigation will plead my excuse if errors are detected

[n] Pasquier (Recherches de la France, l ii c 3) published this ordinance, which indeed as the editor of Ordonnances des Rois t i p 547 observes, is no ordinance, but a regulation for the execution of one previously made, nor does it establish the residence of the parliament in Paris

[o] Velly, Hist de France, t vii p 303 and Encyclopédie art. Parlement are the best authorities I have found. There may very possibly be superior works on this branch of the French constitution which have not fallen into my hands

fifteenth centuries frequently give their king the title of emperor and treat disobedience to him as sacrilege p

But among these lawyers although the general tenants of the crown by barony ceased to appear there still continued to sit a more eminent body the lay and spiritual peers of France representatives as it were of that ancient baronial aristocracy It is a very controverted question at what time this exclusive dignity of peerage a word obviously applicable by the feudal law to all persons coequal in degree of tenure was reserved to twelve vassals At the coronation of Philip Augustus in 1179 we first perceive the six great feudatories dukes of Burgundy Normandy Guienne counts of Toulouse Flanders Champagne distinguished by the offices they performed in that ceremony It was natural indeed that by their princely splendor and importance they should eclipse such petty lords as Bourbon and Coucy however equal in quality of tenure During the reign of Philip Augustus six ecclesiastical peers the duke bishops of Rheims Laon and Langres the count bishops of Beauvais Chalons and Noyon were added as a sort of parallel or counterpoise q Their precedence does not however appear to have carried with it any other privilege at least in judicature than other barons enjoyed But their pre-eminence being fully confirmed Philip the Fair set the precedent of augmenting their original number by conferring the dignity of peerage on the Duke of Brittany and the Count of Artois r Other creations took place subsequently but these were confined during the period comprised in this work to princes of the royal blood The peers were constant members of the parliament from which other vassals holding in chief were never perhaps excluded by law but their attendance was rare in the fourteenth century and soon afterwards ceased altogether s

A judicial body composed of the greatest nobles in France as well as of learned and eminent lawyers must naturally have soon become politically important Notwithstanding their disposition to enhance every royal prerogative as opposed to feudal privileges the parliament was not disinclined to see its own protection invoked by the subject It appears by an ordinance of Charles V in 1371 that the nobility of Languedoc

had appealed to the parliament of Paris against a tax imposed by the king's authority, and this, at a time when the French constitution did not recognize the levying of money without consent of the States General, must have been a just ground of appeal though the present ordinance annuls and overturns it[t] During the tempests of Charles VI's unhappy reign the parliament acquired a more decided authority, and held in some degree, the balance between the contending factions of Orleans and Burgundy This influence was partly owing to one remarkable function attributed to the parliament which raised it much above the level of a merely political tribunal and has at various times wrought striking effects in the French monarchy

The few ordinances enacted by kings of France in the twelfth and thirteenth centuries were generally by the advice of their royal council, in which probably they were solemnly *declared as well as agreed upon* But *after the gradual revo* lution of government which took away from the feudal aristocracy all control over the king's edicts and substituted a new magistracy for the ancient baronial court these legislative ordinances were commonly drawn up by the interior council or what we may call the ministry They were in some instances promulgated by the king in parliament Others were sent thither for registration or entry upon their records This formality was by degrees if not from the beginning deemed essential to render them authentic and notorious and therefore indirectly gave them the sanction and validity of a law[u] Such at least appears to have been the received doctrine before the end of the fourteenth century It has been contended by Mably among other writers that at so early an epoch the parliament of Paris did not enjoy nor even claim to itself that anomalous right of judging the expediency of edicts proceeding from the king which afterwards so remarkably modified the absoluteness of his power *In the fifteenth century however,* it certainly manifested pretensions of this nature first by registering ordinances in such a manner as to testify its own unwillingness and disapprobation of which one instance occurs as early as 1418 and another in 1443 and afterwards by remonstrating against and delaying the registration of laws which it deemed inimical to the public interest A conspicuous proof

[t] Mably l. v. c. 5. note 5. [u] Encyclopedie art. Parlement.

of this spirit was given in their opposition to Louis XI when repealing the Pragmatic Sanction of his father—an ordinance essential, in their opinion, to the liberties of the Gallican church In this instance they ultimately yielded, but at another time they persisted in a refusal to enregister letters containing an alienation of the royal domain *v*

The counsellors of parliament were originally appointed by the king, and they were even changed according to circumstances Charles V made the first alteration, by permitting them to fill up vacancies by election, which usage continued during the next reign Charles VII resumed the nomination of fresh members upon vacancies Louis XI even displaced actual counsellors But in 1468, from whatever motive, he published a most important ordinance, declaring the presidents and counsellors of parliament immovable, except in case of legal forfeiture *x* This extraordinary measure of conferring independence on a body which had already displayed a consciousness of its eminent privilege by opposing the registration of his edicts, is perhaps to be deemed a proof of that short-sightedness as to points of substantial interest so usually found in crafty men But, be this as it may, there was formed in the parliament of Paris an independent power not emanating from the royal will, nor liable except through force, to be destroyed by it, which, in later times, became almost the sole depositary, if not of what we should call the love of freedom, yet of public spirit and attachment to justice France, so fertile of great men in the sixteenth and seventeenth centuries might better spare, perhaps, from her annals any class and description of them than her lawyers Doubtless the parliament of Paris, with its prejudices and narrow views its high notions of loyal obedience so strangely mixed up with remonstrances and resistance its anomalous privilege of objecting to edicts, hardly approved by the nation who did not participate in it, and overturned with facility by the king whenever he thought fit to exert the sinews of his prerogative, but was an inadequate substitute for that co-ordinate sovereignty, that equal concurrence of national representatives in legislation, which has long been the exclusive pride of our government * and to which the States General of France in their best days, had never aspired No

man of sane understanding would desire to revive institutions both uncongenial to modern opinions and to the natural order of society. Yet the name of the parliament of Paris must ever be respectable It exhibited upon various occasions virtues from which human esteem is as inseparable as the shadow from the substance—a severe adherence to principles, an unaccommodating sincerity, individual disinterestedness and consistency. Whether indeed these qualities have been so generally characteristic of the French people as to afford no peculiar commendation to the parliament of Paris, it is rather for the observer of the present day than the historian of past times to decide *x*

The principal causes that operated in subverting the feudal system may be comprehended under three distinct heads—the increasing power of the crown, the elevation of the lower ranks, and the decay of the feudal principle.'

It has been my object in the last pages to point out the acquisitions of power by the crown of France in respect of legislative and judicial authority The principal augmentations of its domain have been historically mentioned in the last book, but the subject may here require further notice The French kings naturally acted upon a system, in order to recover those possessions which the improvidence or necessities of the Carlovingian race had suffered almost to fall away from the monarchy This course, pursued with tolerable

x The province of Languedoc with its dependencies of Quercy and Rouergue having belonged almost in full sovereignty to the counts of Toulouse was not perhaps subject to the feudal resort or appellant jurisdiction of any tribunal at Paris Philip the Bold after its re union to the crown, established the par l ament of Toulouse a tribunal without appeal in 1280 This was however suspended from 1291 to 1443 during which interval the parliament of Paris exercised an appellant jurisdiction over Languedoc Vaissette Hist de Lang t iv p 60, 71 524 Sovereign courts or parliaments were established by Charles VII at Grenoble for Dauphiné and by Louis XI at Bordeaux and Dijon for Guienne and Burgundy The parliament of Rouen is not so ancient These institutions rather diminished the resort of the parliament of Paris which had extended over Burgundy and in time of peace over Guienne

A work has appeared within a few years which throws an abundant light on the judicial system, and indeed on the whole civil polity of France, as well as other countries, during the middle ages I allude to L'Esprit Origine, et Progrès des Institutions judiciares des principaux Pays de l Europe by M Meyer, of Amsterdam especially the first and third volumes It would have been fortunate had its publication preceded that of the first edition of the present work, as I might have rendered this chapter on the feudal system in many respects more perspicuous and correct As it is without availing myself of M Meyer s learning and acuteness to illustrate the obscurity of these researches or discussing the few questions upon which I might venture with deference, to adhere to another opinion, neither of which could conveniently be done on the present occasion I shall content myself with this general reference to a performance of singular diligence and ability which no student of these antiquities should neglect. In all essential points I am happy to perceive that M Meyer s views of the middle ages are not far different from my own —Note to the fourth edition

steadiness for two or three centuries, restored their effective power By escheat or forfeiture, by bequest or purchase, by marriage or succession, a number of fiefs were merged in their increasing domainy It was part of their policy to obtain possession of arriere-fiefs, and thus to become tenants of their own barons In such cases the king was obliged by the feudal duties to perform homage, by proxy, to his subjects, and engage himself to the service of his fief But, for every political purpose, it is evident that the lord could have no command over so formidable a vassal a

The reunion of so many fiefs was attempted to be secured by a legal principle, that the domain was inalienable and imprescriptible This became at length a fundamental maxim in the law of France But it does not seem to be much older than the reign of Philip V, who, in 1318, revoked the alienations of his predecessors, nor was it thoroughly established, even in theory, till the fifteenth century a Alienations, however, were certainly very repugnant to the policy of Philip Augustus and St Louis But there was one species of infeudation so consonant to ancient usage and prejudice that it could not be avoided upon any suggestions of policy, this was the investiture of younger princes of the blood with considerable

y The word domain is calculated by a seeming ambiguity, to perplex the reader of French history In its primary sense the domain or demesne (dominium) of any proprietor was confined to the lands in his immediate occupation excluding those of which his tenants whether in fief or villenage whether for a certain estate or at will had an actual possession or in our law language pernancy of the profits. Thus the compilers of Domesday Book distinguish in every manor the lands held by the lord in demesne from those occupied by his villeins or other tenants. And in England the word if not technically yet in use is still confined to this sense But in a secondary acceptation more usual in France the domain comprehended all lands for which rent was paid (censives) and which contributed to the regular annual revenue of the proprietor The great distinction was between lands in demesne and those in fief A grant of territory whether by the king or another lord, comprising as well domanial estates and tributary towns as feudal superiorities was expressed to convey in dominio quod est in dominico et in feodo quod est in feodo Since therefore fiefs, even those of the vavassors or inferior tenantry were not part of the lord's domain there is as I said an apparent ambiguity in the language of historians who speak of the reunion of provinces to the royal domain. This ambiguity however is rather apparent than real When the Duchy of Normandy for example is said to have been united by Philip Augustus to his domain we are not of course to suppose that the soil of that province became the private estate of the crown It continued as before in the possession of the Norman barons and their sub-vassals who had held their estates of the dukes But it is meant only that the King of France stood exactly in the place of the Duke of Normandy with the same rights of possession over lands absolutely in demesne of rents and customary payments from the burgesses of towns and tenants in roture or villenage and of feudal services from the military vassals The immediate superiority and the immediate resort or jurisdiction, over these devolved to the crown and thus the duchy of Normandy considered as a fief was reunited or more properly merged in the royal domain though a very small part of the territory might become truly domanial

a See a memorial on the acquisition of arrière-fiefs by the Kings of France in Mém de l'Acad des Inscript t i by M Dacier

a Préface au 1sme tome des Ordonnances, par M Pastoret

territorial appanages It is remarkable that the epoch of appanages on so great a scale was the reign of St Louis, whose efforts were constantly directed against feudal independence Yet he invested his brothers with the counties of Poitou, Anjou, and Artois, and his sons with those of Clermont and Alençon This practice, in later times, produced very mischievous consequences

Under a second class of events that contributed to destroy the spirit of the feudal system we may reckon the abolition of villenage, the increase of commerce and consequent opulence of merchants and artisans, and especially the institutions of free cities and boroughs This is one of the most important and interesting steps in the progress of society during the middle ages, and deserves particular consideration

The provincial cities under the Roman empire enjoyed, as is well known, a municipal magistracy, and the right of internal regulation Nor was it repugnant to the spirit of the Frank or Gothic conquerors to leave them in possession of these privileges It was long believed, however, that little, if any, satisfactory proof of their preservation, either in France or Italy, could be found, or, at least, if they had ever existed, that they were wholly swept away in the former country during the confusion of the ninth century, which ended in the establishment of the feudal system

Every town, except within the royal domains, was subject to some lord In episcopal cities the bishop possessed a considerable authority, and in many there was a class of resident nobility But this subject has been better elucidated of late years, and it has been made to appear that instances of municipal government were at least not rare, especially in the south of France, throughout the long period between the fall of the western empire and the beginning of the twelfth century,[b] though becoming far more common in its latter part

The earliest charters of community granted to towns in France have been commonly referred to the time of Louis VI Noyon, St Quentin Laon, and Amiens appear to have been the first that received emancipation at the hands of this prince[c] The chief towns in the royal domains were successively admitted to the same privileges during the reigns of Louis VI,

[b] [Note XVIII]
[c] Ordonnances des Rois ubi supra p 7 These charters are as old as 1110, but the precise date is unknown

Louis VII, and Philip Augustus This example was gradually followed by the peers and other barons; so that by the end of the thirteenth century the custom had prevailed over all France It has been sometimes imagined that the crusades had a material influence in promoting the erection of communities Those expeditions would have repaid Europe for the prodigality of crimes and miseries which attended them if this notion were founded in reality But I confess that in this, as in most other respects, their beneficial consequences appear to me very much exaggerated The cities of Italy obtained their internal liberties by gradual encroachments, and by the concessions of the Franconian emperors Those upon the Rhine owed many of their privileges to the same monarchs, whose cause they had espoused in the rebellions of Germany In France the charters granted by Louis the Fat could hardly be connected with the first crusade, in which the crown had taken no part, and were long prior to the second It was not till fifty years afterwards that the barons seem to have trod in his steps by granting charters to their vassals, and these do not appear to have been particularly related in time to any of the crusades Still less can the corporations erected by Henry II in England be ascribed to these holy wars, in which England had hitherto taken no considerable share

The establishment of chartered towns in France has also been ascribed to deliberate policy "Louis the Gross,' says Robertson, "in order to create some power that might counterbalance those potent vassals who controlled or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within his own domain' Yet one does not immediately perceive what strength the king could acquire by granting these extensive privileges within his own domains, if the great vassals were only weakened, as he asserts afterwards, by following his example In what sense, besides can it be meant that Noyon or Amiens, by obtaining certain franchises, became a power that could counterbalance the Duke of Normandy or Count of Champagne? It is more natural to impute this measure, both in the king and his barons to their pecuniary exigencies for we could hardly doubt that their concessions were sold at the highest price, even if the existing charters did not exhibit the fullest proof of it[d] It is obvious,

[d] Ordonnances des Rois t xi préface p 18 et 50.

thirteenth century, which affected, in a high degree, the feudal constitution of France Towns, distrustful of their lord's fidelity, sometimes called in the king as guarantee of his engagements The first stage of royal interference led to a more extensive measure Philip Augustus granted letters of safeguard to communities dependent upon the barons, assuring to them his own protection and patronage[i] And this was followed up so quickly by the court, if we believe some writers, that in the next reign Louis VIII pretended to the immediate sovereignty over all chartered towns, in exclusion of their original lords[j] Nothing, perhaps, had so decisive an effect in subverting the feudal aristocracy The barons perceived, too late, that, for a price long since lavished in prodigal magnificence or useless warfare, they had suffered the source of their wealth to be diverted, and the nerves of their strength to be severed The government prudently respected the privileges secured by charter Philip the Long established an officer in all large towns to preserve peace by an armed police, but though subject to the orders of the crown, he was elected by the burgesses, and they took a mutual oath of fidelity to each other Thus shielded under the king's mantle, they ventured to encroach upon the neighboring lords, and to retaliate for the long oppression of the commonalty[k] Every citizen was bound by oath to stand by the common cause against all aggressors, and this obligation was abundantly fulfilled In order to swell their numbers, it became the practice to admit all who

[i] Mably Observations sur l Hist de France l iii c 7

[j] Reputabat civitates omnes suas esse in quibus communiæ essent I mention this in deference to Du Cange Mably and others, who assume the fact as incontrovertible but the passage is only in a monkish chronicler whose authority were it even more explicit would not weigh much in a matter of law Beaumanoir however sixty years afterwards lays it down that no one can erect a commune without the king s consent c 50 p 268 And this was an unquestionable maxim in the fourteenth century —Ordonnances t xi p 29

[k] In the charter of Philip Augustus to the town of Roye in Picardy we read If any stranger whether noble or villein commits a wrong against the town the mayor shall summon him to answer for it and if he does not obey the summons the mayor and inhabitants may go and destroy his house in which we (the king) will lend them our assistance if the house be too strong for the burgesses to pull down except the case of one of our vassals whose house shall not be destroyed but he shall not be allowed to enter the town till he has made amends at the discretion of the mayor and jurats Ordonnances des Rois t xi p 228 This summary process could only as I conceive, be employed if the house was situated within the jurisdiction of the commune See Charter of Crespy id p 253 In other cases the application for redress was to be made in the first instance to the lord of the territory wherein the delinquent resided But upon his failing to enforce satisfaction the mayor and jurats might satisfy themselves Iceat justitiam quærere, prout poterunt that is, might pull down his house provided they could. Mably positively maintains the communes to have had the right of levying war l iii c 7 And Bréquigny seems to coincide with him Ordonnances préface p 46 see also II st. de Languedoc t iii p 115 The territory of commune was called Pax (p 185) an expressive word.

came to reside within their walls to the rights of burghership, even though they were villeins appurtenant to the soil of a master from whom they had escaped *l* Others, having obtained the same privileges, continued to dwell in the country, but, upon any dispute with their lords, called in the assistance of their community Philip the Fair, erecting certain communes in Languedoc, gave to any who would declare on oath that he was aggrieved by the lord or his officers the right of being admitted a burgess of the next town, upon paying one mark of silver to the king, and purchasing a tenement of a definite value But the neglect of this condition and several other abuses are enumerated in an instrument of Charles V, containing the complaints made by the nobility and rich ecclesiastics of the neighborhood *m* In his reign the feudal independence had so completely yielded, that the court began to give in to a new policy, which was ever after pursued that of maintaining the dignity and privileges of the noble class against those attacks which wealth and liberty encouraged the plebeians to make upon them

The maritime towns of the south of France entered into separate alliances with foreign states as Narbonne with Genoa in 1166 and Montpellier in the next century At the death of Raymond VII, Avignon Arles and Marseilles affected to set up republican governments but they were soon brought into subjection *n* The independent character of maritime towns was not peculiar to those of the southern provinces Edward II and Edward III negotiated and entered into alliances with the towns of Flanders to which neither their count nor the King of France were parties *o* Even so late as the reign of Louis XI the Duke of Burgundy did not hesitate to address the citizens of Rouen in consequence of the capture of some ships as if they had formed an independent state *p* This evidently arose out of the ancient customs of private

l One of the most remarkable privileges of chartered towns was that of conferring freedom on runaway serfs if they were not reclaimed by their masters within a certain time This was a pretty general law Si quis nativus qui etè per unum annum et unum diem in aliqua villa privilegiata manserit ita quod in eorum communem gyldam tanquam civis receptus fuerit eo ipso à villenagio liberabitur Clanvil l v c 5 The cities of Languedoc had the same privilege. Vassette t i p 528, 530. And the editor of the Ordonnances speaks of it as general p 44. A similar custom was established in Germany but the term of prescription was, in some places at least, much longer than a year and a day Pfeffel t i p. 294

m Martenne Thesaur Anecd t. i p. 1515

n Velly t iv p 446, t v p 97

o Rymer t. iv passim

p Garnier t xv p 396.

of a vassal came in place of those of a subject and a citizen. This was the revolution of the ninth century. In the twelfth and thirteenth another innovation rather more gradually prevailed, and marks the third period in the military history of Europe. Mercenary troops were substituted for the feudal militia. Undoubtedly there could never have been a time when valor was not to be purchased with money; nor could any employment of surplus wealth be more natural either to the ambitious or the weak But we cannot expect to find numerous testimonies of facts of this description [u] In public national history I am aware of no instance of what may be called a regular army more ancient than the body-guards, or huscarles, of Canute the Great. These select troops amounted to six thousand men, on whom he probably relied to ensure the subjection of England. A code of martial law compiled for their regulation is extant in substance; and they are reported to have displayed a military spirit of mutual union, of which their master stood in awe [v] Harold II. is also said to have had Danish soldiers in pay. But the most eminent example of a mercenary army is that by whose assistance William achieved the conquest of England Historians concur in representing this force to have consisted of sixty thousand men He after-

men Philip IV summoned one foot soldier for every twenty hearths to take the field after the battle of Courtrai (Daniel, Hist de la Milice Française, Velly, t iii p 62 t vii p 287) Commissions of array, either to call out the whole population or, as was more common, to select the most serviceable by forced impressement occur in English records from the reign of Edward I (Stuart s View of Society, p 400) and there are even several writs directed to the bishops, enjoining them to cause all ecclesiastical persons to be arrayed and armed on account of an expected invasion —Rymer t vi p 726 (46 E III), t vii p 162 (1 R. II) and t viii p 270 (3 H IV)

[u] The preface to the eleventh volume of Recueil des Historiens p 232 notices the word solidarii for hired soldiers, as early as 1030 It was probably unusual at that time though in Roger Hoveden Ordericus Vitalis and other writers of the twelfth century it occurs not very unfrequently We may perhaps conjecture the abbots as both the richest and the most defenceless to have been the first to avail themselves of mercenary valor

[v] For these facts of which I remember no mention in English history I am indebted to the Danish collection of Langebek, Scriptores Rerum Danicarum Medii Ævi Though the Leges Castrensis Canuti Magni, published by him, t iii. p 141 are not in their original statutory form, they proceed from the pen of Sweno, the earliest Danish historian who lived under Waldemar I, less than a century and a half after Canute I apply the word huscarle familiar in Anglo Saxon documents to these military retainers, on the authority of Langebek, in another place, t ii p 454. The object of Canute s institutions was to produce an uniformity of discipline and conduct among his soldiers, and thus to separate them more decidedly from the people They were distinguished by their dress and golden ornaments Their manners towards each other were regulated, quarrels and abusive words subjected to a penalty All disputes, even respecting lands were settled among themselves at their general parliament A singular story is told which if false, may still illustrate the traditionary character of these guards that Canute having killed one of their body in a fit of anger it was debated whether the king should incur the legal penalty of death, and this was only compromised by his kneeling on a cushion before the assembly, and awaiting their permission to rise. T iii p 150

ing taxation, the effects whereof we have lately been investigating

A feudal army, however, composed of all tenants in chief and their vassals, still presented a formidable array It is very long before the paradox is generally admitted that numbers do not necessarily contribute to the intrinsic efficiency of armies Philip IV assembled a great force by publishing the arriere ban, or feudal summons, for his unhappy expedition against the Flemings A small and more disciplined body of troops would not, probably, have met with the discomfiture of Courtray Edward I and Edward II frequently called upon those who owed military service, in their invasions of Scotland [z] But in the French wars of Edward III the whole, I think, of his army served for pay, and was raised by contract with men of rank and influence, who received wages for every soldier according to his station and the arms he bore The rate of pay was so remarkably high, that unless we imagine a vast profit to have been intended for the contractors, the private lancers and even archers must have been chiefly taken from the middling classes, the smaller gentry, or rich yeomanry of England [a] This part of Edward's military system was probably a leading cause of his superiority over the French among whom the feudal tenantry were called into the field and swelled their unwieldy armies at Crecy and Poitiers Both parties however, in this war employed mercenary troops Philip had 15 000 Italian crossbow men at Crecy It had for some time before become the trade of soldiers of fortune to enlist under leaders of the same description as themselves in companies of adventure passing from one service to another, unconcerned as to the cause in which they were retained These military adventurers played a more remarkable part in Italy than in France though not a little troublesome to the latter country The feudal tenures had at least furnished a loyal native militia whose duties though much limited in the extent, were defined by usage and enforced by principle They gave place, in an

z Rymer t i. p 173 180 199, et al b sæp us.

a Many proofs of th s may be adduced from Rymer s Collect on The fo ow ng is from Brady s H story of England vol Append x p 86. The wages al lowed by contract in 1346 were for an earl 6s 8d per day for barons and ban nerets 4s for kn ghts 2s for squ res 1s for archers and hobelers (l ght cav alry) 6d for archers on foot, 3d for Welshmen 2d These sums mult pl ed by about 24, to bring tl em on a level w th the present value of money [1818] w ll show the pay to have been extremely h gh The cavalry of course fur n shed themselves w th horses and equ pments as we l as arms wh ch were very expens ve See too Book I p. 62 of th s volume.

evil hour for the people and eventually for sovereigns, to contracts with mutinous hirelings, generally strangers, whose valor in the day of battle inadequately redeemed their bad faith and vexatious rapacity France, in her calamitous period under Charles VI and Charles VII, experienced the full effects of military licentiousness At the expulsion of the English, robbery and disorder were substituted for the more specious plundering of war Perhaps few measures have ever been more popular, as few certain have been more politic, than the establishment of regular companies of troops by an ordinance of Charles VII in 1444[b] These may justly pass for the earliest institution of a standing army in Europe, though some Italian princes had retained troops constantly in their pay, but prospectively to hostilities which were seldom long intermitted Fifteen companies were composed each of a hundred men at arms, or lancers, and in the language of that age, the whole body was one thousand five hundred lances But each lancer had three archers, a coutiller, or soldier armed with a knife and a page or valet attached to him all serving on horseback —so that the fifteen companies amounted to nine thousand cavalry[c] From these small beginnings as they must appear in modern times arose the regular army of France which every succeeding king was solicitous to augment The ban was sometimes convoked that is, the possessors of fiefs were called upon for military service in subsequent ages but with more of ostentation than real efficiency

The feudal compact thus deprived of its original efficacy soon lost the respect and attachment which had attended it Homage and investiture became unmeaning ceremonies the incidents of relief and aid were felt as burdensome exactions And indeed the rapacity with which these were levied especially by the Norman sovereigns and their barons was of itself sufficient to extinguish all the generous feelings of vassalage Thus galled as it were by the armor which he was compelled to wear but not to use the military tenant of England looked

[b] The estates at Orleans in 1439 had advised this measure as is recited in the preamble of the ordinance. Ordonnances des Rois, t. xiv. p. 312. Saumond observes (vol. x. p. 352) that very little is to be found in historians about the establishment of these companies d'ordonnance though the most important event in the reign of Charles VII. The old soldiers of fortune who pillaged the country either entered into these companies or were disbanded and after their dispersion were readily made amenable to the law. This writer is exceedingly full on the subject.

[c] Daniel, Hist. de la Milice Françoise p. 256. Villaret, Hist. de France, t. xv. p. 394.

no longer with contempt upon the owner of lands in socage, who held his estate with almost the immunities of an allodial proprietor But the profits which the crown reaped from wardships, and perhaps the prejudices of lawyers, prevented the abolition of military tenures till the restoration of Charles II In France the fiefs of noblemen were very unjustly exempted from all territorial taxation, though the tailles of later times had, strictly speaking, only superseded the aids to which they had been always liable The distinction, it is well known, was not annihilated till that event which annihilated all distinctions, the French revolution

It is remarkable that, although the feudal system established in England upon the Conquest broke in very much upon our ancient Saxon liberties—though it was attended with harsher servitudes than in any other country, particularly those two intolerable burdens, wardship and marriage—yet it has in general been treated with more favor by English than French writers The hardiness with which the ancient barons resisted their sovereign, and the noble struggles which they made for civil liberty, especially in that Great Charter, the basement at least, if not the foundation, of our free constitution, have met with a kindred sympathy in the bosoms of Englishmen, while, from an opposite feeling, the French have been shocked at that aristocratic independence which cramped the prerogatives and obscured the lustre of their crown Yet it is precisely to this feudal policy that France is indebted for that which is ever dearest to her children their national splendor and power That kingdom would have been irretrievably dismembered in the tenth century if the laws of feudal dependence had not preserved its integrity Empires of unwieldy bulk, like that of Charlemagne have several times been dissolved by the usurpation of provincial governors as is recorded both in ancient history and in that of the Mahometan dynasties in the East What question can there be that the powerful dukes of Guienne or counts of Toulouse would have thrown off all connection with the crown of France when usurped by one of their equals, if the slight dependence of vassalage had not been substituted for legitimate subjection to a sovereign?

It is the previous state of society, under the grandchildren of Charlemagne which we must always keep in mind if we would appreciate the effects of the feudal system upon the

free So far as the sphere of feudality extended it diffused the spirit of liberty and the notions of private right Everyone I think will acknowledge this who considers the limitations of the services of vassalage so cautiously marked in those law books which are the records of customs the reciprocity of obligation between the lord and his tenant the consent required in every measure of a legislative or a general nature the security above all which every vassal found in the administration of justice by his peers and even (we may in this sense say) in the trial by combat The bulk of the people it is true were degraded by servitude but this had no connection with the feudal tenures

The peace and good order of society were not promoted by this system Though private wars did not originate in the feudal customs it is impossible to doubt that they were perpetuated by so convenient an institution which indeed owed its universal establishment to no other cause And as predominant habits of warfare are totally irreconcilable with those of industry not merely by the immediate works of destruction which render its efforts unavailing but through that contempt of peaceful occupations which they produce the feudal system must have been intrinsically adverse to the accumulation of wealth and the improvement of those arts which mitigate the evils or abridge the labors of mankind

But as a school of moral discipline the feudal institutions were perhaps most to be valued Society had sunk for several centuries after the dissolution of the Roman empire into a condition of utter depravity where if any vices could be selected as more eminently characteristic than others they were falsehood treachery and ingratitude In slowly purging off the lees of this extreme corruption the feudal spirit exerted its ameliorating influence Violation of faith stood first in the catalogue of crimes most repugnant to the very essence of a feudal tenure most severely and promptly avenged most branded by general infamy The feudal law books breathe throughout a spirit of honorable obligation The feudal course of jurisdiction promoted what trial by peers is peculiarly calculated to promote a keener feeling and readier perception of moral as well as of legal distinctions And as the judgment and sympathy of mankind are seldom mistaken in these great points of veracity and justice except through the temporary

NOTES TO BOOK II.

Note I

It is almost of course with the investigators of Teutonic antiquities to rely with absolute confidence on the authority of Tacitus, in his treatise De Moribus Germanorum And it is indeed a noble piece of eloquence—a picture of manners so boldly drawn, and, what is more to the purpose, so probable in all its leading characteristics, that we *never hesitate, in reading, to believe It is only when we have closed* the book that a question may occur to our minds, whether the Roman writer, who had never crossed the Rhine, was altogether a sufficient witness for the internal history, the social institutions, of a people so remote and so dissimilar But though the sources of his information do not appear, it is manifest that they were copious His geographical details are minute, distinct and generally accurate Perhaps in no instance have his representations of ancient Germany been falsified by direct testimony, if in a few circumstances there may be reason to suspect their exact faithfulness

In the very slight mention of German institutions which I have made in the text there can be nothing to excite doubt They are what Tacitus might easily learn, and what, in fact we find confirmed by other writers But when he comes to a more exact description of the social constitution and of the different orders of men, it may not be unreasonable to receive his testimony with a less unhesitating assent than has commonly been accorded to it A sentence, a word of Tacitus has passed for conclusive, and no theory which they contradict would be admitted A modern writer, however, has justly pointed out that his informers might easily be deceived about the social institutions of the tribes beyond the Rhine and in fact it is not on Tacitus himself but on these unknown authorities, that we rely for the fidelity of his representations We may readily conceive by our own experience, the difficulty of obtaining a clear and exact knowledge of laws customs and manners for which we have no corresponding analogies Let us ' says Luden to his countrymen ask an enlightened Englishman who speaks German concerning the political institutions of his country, and it will be surprising how little we shall understand from him Ask him to explain what is a freeman a freeholder a copyholder, or a yeoman and we shall find how hard it is to make national institutions and relations intelligible to a foreigner ' (Luden Geschichte des Deutschen Volkes, vol i p 702)

of Tacitus was as much a wrong word in one direction as *servus* was in another For we believe that the *colonus* of early Rome was a tenant or farmer yielding rent but absolutely a free man,[a] though in the third century, after barbarians had been settled on lands in the empire we find it applied to a semi servile condition It is more worthy to be observed that his account of the kingly office among the Germans is not quite consistent Sometimes it appears as if peculiar to certain tribes iis gentibus quæ regnantur (c. 25) and here he seems to speak of the power as very great opposing it to liberty while at other times we are led to suppose an aristocratic senate and an ultimate right of decision in the people at large with a very limited sovereign at the head (c 7 11 &c) This triple constitution has been taken by Montesquieu for the foundation of our own in the well known words— Ce beau systeme a ete trouve dans les bois

Note II

It is not easy to explain these partitions made by the barbarous nations on their settlement in the empire and what would be still more remarkable if historians were not so defective in that age we find no mention of such partitions in any records excepting their own laws and a few documents of the same class Montesquieu says Ces deux tiers n etaient pas que dans certains quartiers qu on leur assigna (l 30 c 8) Troja seems to hold the same opinion as to the first settlement of the Burgundians in Gaul but admits a general division in 471 Storia d Italia nel medio evo (III 1293) It is indeed impossible to get over the proof of such a partition or at least one founded on a general law arising from the fifty fourth section of the Burgundian code Eodem tempore quo populus noster mancipiorum tertiam et duas terrarum partes accepit. This code was promulgated by Gundobald early in the sixth century It contains several provisions protecting the Roman in the possession of his third against any encroachment of the *hospes* a word applied indifferently to both parties as in common Latin to *host* and *guest*

The word *sortes* which occurs both with the Burgundians and Visigoths has often been referred to the general partition on the hypothesis that the lands had been distributed by lot. This perhaps has no evidence except the erroneous inference from the word *sors* but it is not wholly improbable Savigny indeed observes that both the barbarian and the Roman estates were called *sortes* referring to Leges Visigothorum lib x tit - l 1 where we find in some editions sortes Gothicæ vel Romanæ but all the manuscripts according to Bouquet read sortes Gothicæ et tertia Romanorum which of course gives a contrary sense (Rec des Hist iv 430) * It seems from some texts of the Burgundian law that the whole territory was not partitioned at once because in a supplement to the code not much before 500 provision is made for new settlers who were to receive only a moiety De Romanis hoc ordinavimus ut non amplius a Burgundionibus qui infra venerunt requiratur quam ut præsens necessitas

a V de Facc olat Lex con

* Procop us says of the d v s on made by Genseric n Italy Δ βυας τους αλλους αφειλετο μεν τους αγρους ο πλε στο τε ησαν και αριστοι, ες δε το των Βανδ λων δ ἑνε μεν εθνος και απ αυτου κλῆρο Βα διλων οι αγροι ουτοι ἐς τοδε καλουνται του χρονου κα τα μεν χωρια ξυμπαντα οσα τοις ε πα σ και τοις αλλοις Βανδιλοις Γ ριχος παραδεδωκει, ουδεμι α φορου απαγωγης υποτελη εκελευσεν ε ναι De Bello Vandal l 1 c. 8. This passage gives no confirmation to the hypothes s of a part on by lot but the contrary and though we cannot reason absolute y from the analogy of Afr ca to Caul t is natural to nterpret κλῆρο ι Βανδιλων and sortes Sal cæ in the same manner

from the civil law, the royal power is more developed This code remained in force after Charlemagne, but Hincmar says that few continued to live by it In the Visigothic laws enacted in Spain to the exclusion of the Roman in 642 all the barbarous elements have disappeared, it is the work of the clergy, half ecclesiastical half imperial

It has been remarked by acute writers Guizot and Troja that the Salic law does not answer the purpose of a code, being silent on some of the most important regulations of civil society The former adds that we often read of matters decided "secundum legem Salicam" concerning *which we can find nothing in that law He presumes therefore*, that it is only a part of their jurisprudence Troja (Storia d Italia nel medio evo v 8) quoting Buat for the same opinion thinks it probable that the Franks made use of the Roman law where their own was defective It may perhaps be not less probable than either hypothesis that the judges gradually introduced principles of decision which as in our common law, acquired the force of legislative enactment The rules of the Salic code principally relate to the punishment or compensation of crimes and the same will be found in our earliest Anglo Saxon laws The object of such written laws, with a free and barbarous people was not to record their usages or to lay down rules which natural equity would suggest as the occasion might arise but to prevent the arbitrary infliction of penalties Chapter lxii, On Successions may have been inserted for the sake of the novel provision about Salic lands, which could not have formed a part of old Teutonic customs

Note IV

The position of the former inhabitants after the conquest of Gaul by the Burgundians the Visigoths and the Franks both relatively to the new monarchies and to the barbarian settlers themselves is a question of high importance It has of course engaged the philosophical school of the present day and has led to much diversity of hypotheses The extreme poles are occupied one by M Raynouard in his Hist du Droit Municipal and by a somewhat earlier writer, Sir Francis Palgrave who following the steps of Dubos bring the two nations conquerors and conquered almost to an equality, as the common subjects of a sovereign who had assumed the prerogatives of a Roman emperor, and on the opposite side by Signor Troja [a] and by M Thierry who finds no closer analogy for their relative conditions than that of the Greeks and Turks in the days that have lately gone by It is no more a proof ' he contends that the Roman natives were treated as free because a few might gain the favor of a despotic court than that the Christian and Jew stand on an even footing with the Mussulman because an Eastern Sultan may find his advantage in employing some of either religion ' (Lettres sur l Hist de France Lett vii) This is not quite consistent with his language in a later work Sous le regne de la premiere race se montrent deux conditions de liberte la liberte par excellence qui est la condition du Franc et la liberte du second ordre le droit de cite romaine (Récits des Temps Merovingiens i 242—Bruxelles, 1840)

It is however as it seems to me and as the French writers have generally held impossible to maintain either of these theories The

[a] La Storia di Francia sotto i rè della prima razza può dirsi non consistere che negli esempj delle oppressioni de Franchi sopra i cittadini Romani e della generosa protezione de vescovi o Romani o Franchi (Storia d Italia Vol i part v p 421) This is not borne out by history We find no oppression of Romans by Franks though much by Frank kings The conquerors may have been naturally insolent but this is not recorded

but in return less oppressed by taxation than under the imperial fisc, deriving also a reflected importance from the bishop when he was a Roman, and sheltered by his protection) this class of the native inhabitants held not only a free but an honorable position Yet this was still secondary In a free commonwealth the exclusion from political rights by a broad line of legal separation brings with it an indelible sense of inferiority But this inferiority is not allowed by all our inquirers.

The nations who were unequal before the law soon became equal before the sovereign if not in theory yet in practice, and the children of the companions of Clovis were subjected with few and not very material exceptions to the same positive dominion as the descendants of the proconsul or the senator It is not difficult to form plausible conjectures concerning the causes of this equalization, nor are the means by which it was effected entirely concealed Considered in relation to the Romans the Franks for we will continue to instance them constituted a distinct state, but compared to the Romans a very small one and the individuals composing it, dispersed over Gaul were almost lost among the tributaries Experience has shown that whenever a lesser or poorer dominion is conjoined in the person of the same sovereign to a greater or more opulent one the minuter mass is always in the end subjugated by the larger' (Rise and Progress of the English Commonwealth vol i p 363)

Such is in a few words the view taken of the Merovingian history by a very learned writer, Sir F Palgrave And doubtless the concluding observation is just in the terms wherein he expresses it But there seems a fallacy in applying the word poorer' to the Franks or any barbarian conquerors of Gaul They were poorer before their conquest, they were richer afterwards At the battle of Hastings the balance of wealth was I doubt not on the side of Harold more than of William, but twenty years afterwards Domesday Book tells us a very different story If an allotment was made among the Franks or if they served themselves to land without any allotment on either hypothesis they became the great proprietors of northern France and on whom else did the beneficiary donations the rewards of faithful Antrustiones generally devolve? It is perfectly consistent with the national superiority of the Franks in the sixth and seventh centuries that in the last age of the Carlovingian line when the distinction of laws had been abolished or disused the more numerous people should in many provinces have (not as Sir Francis Palgrave calls it subjugated it) absorbed the other We find this to have been the case at the close of the Anglo Norman period at home

One essential difference is generally supposed to have separated the Frank from the Roman The latter was subject to personal and territorial taxation Such had been his condition under the empire, and whether the burden might or not be equal in degree (probably it was not such) it is not at all reasonable to believe without proof that he was ever exempted from it It is however true that some French writers have assumed all territorial impositions on free landholders to have ceased after the conquest (Recits des Temps Merovng i 268)[g] This controversy I do not absolutely undertake to determine but the proof evidently lies on those who assert the Roman to have been more favored than he was under the empire when all were liable to the land tax though only those destitute of freehold possessions paid the capitation or *census* We cannot infer such a distinction on the ground

[g] M Lehuerou imputes the same theory to Montesquieu But his words (Espr des Loix xxx 13) do not assert that the Romans might not be subject to taxation in the earlier Merovingian period though afterwards as he supposes this obligation was replaced by that of military service

of tenure from a passage of Gregory (lib ix. c 30)—Childebertus vero rex descriptores in Pictavos, invitante Marovio episcopo, jussit, abire; id est, Florentianum majorem domus regiæ, et Romulfum palatii sui comitem, ut scilicet populus censum quem tempore patris functi fuerant, facta ratione innovaturæ, reddere deberet. Multi enim ex his defuncti fuerant, et ob hoc viduis orphanisque ac debilibus tributi pondus inciderat Quod hi discutientes per ordinem, relaxantes pauperes ac infirmos, illos quos justitiæ conditio tributarios dabat, censu publico subsiderunt" These collectors were repelled by the citizens of Tours, who proved that Clotaire I had released their city from any public tribute, out of respect for St Martin. And the reigning king acquiesced in this immunity It may also be inferred from another passage (lib x c 7) that even ecclesiastical property was not exempt from taxation, unless by special privilege, which indeed seems to be implied in the many charters conceding this immunity, and in the forms of Marculfus [A]

It seems, however, clear that the Frank landholder, the *Francus ingenuus*, born to his share, according to old notions, of national sovereignty, gave indeed his voluntary donation annually to the king, but reckoned himself entirely free from compulsory tribute We read of no tax imposed by the assemblies of the Field of March, and if the kings had possessed the prerogative of levying money at will, the monarchy must have become wholly absolute without opposition The barbarian was distinguished by his abhorrence of tribute. Tyranny might strip one man of his possessions, banish another from his country, destroy the life of a third, the rest would at the utmost murmur in silence, but a general imposition on them as a people was a yoke under which they would not pass without resistance I shall mention a few instances in a future note The Roman on the other hand, complained doubtless of new or unreasonable taxation, but he could not avoid acknowledging a principle of government to which his forefathers had for so many ages submitted. The house of Clovis stood to him in place of the Cæsars, this part of the theory of Dubos cannot be disputed But when that writer extends the same to the Frank, as a constitutional position, and not merely referring to acts protested against as illegal the voice of history refutes him

Dubos has asserted and is followed by many, that the army of Clovis was composed of but a few thousand Salian Franks And for this the testimony of Gregory has been adduced who informs us only that 3 000 of the army of Clovis (a later writer says 6 000) were baptized with him (Greg Tur lib ii c 33) But Clovis was not the sole chieftain of his tribe It has been seen that he enlarged his command towards the close of his life, by violent measures with respect to other kings as independent apparently as himself and some of whom belonged to his family Thus the Ripuarian Franks who occupied the left bank of the Rhine, came under his sway And besides this the argument from

[A] This note was written before I had looked at a work published in 1843, by M Lehuerou Histoire des Institutions Merovingiennes, in which, with much impartiality and erudition he draws a line between the theories of Dubos and Montesquieu and upon this particular subject of taxation, clearly proves, in my opinion that the land tax imposed under the empire continued to be levied on the Roman subjects of Clovis and the next two generations. (Vol i p 271 *et post*) The Franks, such as were ingenui, were originally exempt from this and all other tribute Of this M Lehuerou makes no doubt nor perhaps has any one doubted it except Dubos. But, under the sons and grandsons of Clovis endeavors were made to which I have drawn attention in a subsequent note by those despotic princes eager to assume the imperial prerogatives over all their subjects to rob them of their national immunity and a struggle of the German aristocracy ensued which annihilated the personal authority of the sovereign (Hist. des Inst. Méroving. i. 425 *et post*)

the great restorer, or rather founder, of the empire fixed his capital at Aix la-Chapelle

In Aquitaine, on the other hand, everything appears Roman, in contradistinction to Frank, except the reigning family The chief difficulty, therefore, concerns Neustria, that is, from the Scheldt, or, perhaps, the Somme, to the Loire, and to this important kingdom the advocates of the two nations Roman and Frank, lay claim. M Thierry has paid much attention to the subject, and come to the conclusion that, in the seventh century, the number of Frank landholders, from the Rhine to the Loire, much exceeded that of the Roman And this excess he takes to have been increased through the seizure of Church lands in the next age by Charles Martel, who bestowed them on his German troops enlisted beyond the Rhine The method which Thierry has pursued, in order to ascertain this, is ingenious and presumptively right He remarked that the names of places will often indicate whether the inhabitants, or more often the chief proprietor, were of Roman or Teutonic origin Thus Franconville and Romainville, near Paris, are distinguished in charters of the ninth century, as *Francorum villa* and *Romanorum villa* This is an instance where the population seems to have been of different race But commonly the owner's Christian name is followed by a familiar termination In that same neighborhood proper names of German origin, with the terminations *ville, court, mont, val*, and the like, are very frequent And this he finds to be generally the case north of the Loire, compared with the left bank of that river It is, of course, to be understood that this proportion of superior landholders did not extend to the general population. For that, in all Neustrian France, was evidently composed of those who spoke the rustic Roman tongue—the corrupt language which, in the tenth or eleventh century, became worthy of the name of French, and this was the case, as we have just seen, in part of Austrasia, as Champagne and Lorraine

We may, therefore, conclude that the Franks, even in the reign of Clovis, were rather a numerous people—including of course, the Ripuarian as well as the Salian tribe They certainly appear in great strength soon afterwards If we believe Procopius the army which Theodebert, king only of Austrasia, led into Italy in 539 amounted to 100 000 And admitting the probability of great exaggeration we could not easily reconcile this with a very low estimate of Frank numbers But, to say the truth, I do not rely much on this statement. It is, at all events to be remembered that the dominions of Theodebert, on each side of the Rhine, would furnish barbarian soldiers more easily than those of the western kingdoms Some may conjecture that the army was partly composed of Romans, yet it is doubtful whether they served among the Franks at so early a period though we find them some years afterwards under Chilperic, a Neustrian sovereign The armies of Aquitaine it is said, were almost wholly composed of Romans or Goths, it could not have been otherwise

The history of Gregory which terminates in 598 affords numerous instances of Romans in the highest offices not merely of trust but of power Such were Celsus Amatus Mummolus and afterwards Protadius in Burgundy and Desiderius in Aquitaine But in these two parts of the monarchy we might anticipate a greater influence of the native population. In Neustria and Austrasia a Roman count, or mayor of the palace might have been unfavorably beheld Yet in the latter kingdom all Frank as it was in its general character, we find, even before the middle of the sixth century Lupus Duke of Champagne, a man of considerable weight and a Roman by birth, and it was the policy afterwards of Brunehaut to employ Romans. But this not only excited the hostility of the Austrasian Franks, but of the

Burgundians themselves, nor did anything more tend to the ruin of that ambitious woman Despotism through its most ready instruments was her aim and when she signally failed in the attempt the star of Germany prevailed From that time Austrasia at least if not Neustria became a Frank aristocracy We hear little more of Romans ecclesiastics excepted in considerable power

If indeed we could agree with Montesquieu and Mably that a Roman subject might change his law and live by the Salic code at his discretion his equality with the Franks would have been virtually recognized since every one might place himself in the condition of the more favored nation And hence Mably accounts for the prevalence of the Frank jurisprudence in the north of France since it was more advantageous to adopt it as a personal law The Roman *might* become an allodial landholder a member of the sovereign legislature in the Field of March His *wergild* would be raised and with that his relative situation in the commonwealth his lands would be exempt from taxation But this theory has been latterly rejected We cannot indeed conceive one less consonant to the principles of the barbarian kingdoms or the general language of the laws Montesquieu was deceived by the passage in an early capitulary of which the best manuscripts furnish a different reading Mably was pleased with an hypothesis which rendered the basis of the state more democratical But the first who propagated this error and on more plausible grounds than Montesquieu though he (Esprit des Loix liv xxviii c 4) seems to claim it as a discovery of his own were Du Cange and Muratori *They were misled by an edict of the emperor Lothaire I in 824* —

Volumus ut cunctus populus Romanus interrogetur quali lege vult vivere ut tali quali professi fuerint vivere velle vivant But Savigny has proved that this was a peculiar exception of favor granted at that time to the Romans or rather separately to each person and that not as a privilege of the ancient population but for the sake of the barbarians who had settled at Rome Raynouard is one of those who have been deceived *by the more obvious meaning of this law* and adopts the notion of Mably on its authority Were it even to bear such an interpretation we could not draw a general inference from it In the case of married women or of the clergy the liberty of changing the law of birth was really permitted (See Savigny i 134 *et post*, Engl transl)

It should however be mentioned that a late very learned writer Troja admits the hypothesis of a change of law in France not as a right in every Roman s power but as a special privilege sometimes conceded by the king And we may think this conjecture not unworthy of regard since it serves to account for what is rather anomalous—the admission of mere Romans at an early period to the great offices of the monarchy and especially to that of count which involved the rank of presiding in the Frank *mallus* It is said that Romans sometimes assumed German names though the contrary never happened and this in itself seems to indicate a change as far as was possible of national connection But it is of little service to the hypothesis of Montesquieu and Mably Of the edict of Lothaire Troja thinks like Savigny but he adopts the reading of the capitulary as quoted by Montesquieu Francum aut barbarum *aut* hominem qui lege Salica vivit where the best manuscripts omit the second *aut*

NOTE V

This subject has been fully treated in the celebrated work by Savigny History of Roman Law in the Middle Ages The diligence and fidelity of this eminent writer have been acknowledged on all sides *nor has any one been so copious in collecting materials for the history* of mediæval jurisprudence, or so perspicuous in arranging them In a few points later inquirers have not always concurred with him But with the highest respect for Savigny, we may say that of the two leading propositions—namely first the continuance of the Theodosian code copied into the Breviarium Aniani as the personal law of the Roman inhabitants both of France and Italy for several centuries after the subjugation of those countries by the barbarians and secondly the quotation of the Pandects and other parts of the law of Justinian by some few writers before the pretended discovery of a manuscript at Amalfi—the former has been perfectly well known at least ever since the publication of the glossary of Du Cange in the seventeenth century and that of Muratori's Dissertations on Italian Antiquities in the next nor indeed could it possibly have been overlooked by any one who had read the barbarian codes full as they are of reference to those who followed the laws of Rome while the second is also proved though not so abundantly by several writers of the last age Guizot praising Savigny for his truthfulness and for having shown the permanence of Roman jurisprudence in Europe well asks how it could ever have been doubted. (Civil en France Leçon II)

A late writer indeed has maintained that the Romans did not preserve their law under *the Lombards elaborately repelling* the proofs to the contrary alleged by Muratori and Savigny (See Troja Discorso della Condizione dei Romani vinti dai Longobardi subjoined to the fourth volume of his Storia d Italia.) He does not admit that the inhabitants were treated by the Lombard conquerors as anything better *than tributaries or colons.* Even the bishops *and clergy were judged* according to the Lombard law (vol v p. 86) The personal law did not come in till the conquest of Charlemagne who established it in Italy And though later according to this writer in its origin the distinctions introduced by it subsisted much longer than they did in France Instances of persons professing to live by the Lombard law are found very late in the middle ages the last is at Bergamo in 1388. But Bergamo was a city in which the Lombard population had predominated. (Savigny vol I p 38)

Whatever may have been the case in Lombardy the existence of personal law in France is beyond question It is far more difficult to fix a date for its termination *These national distinctions were indelibly* preserved in the south of France by a law of Valentinian III copied into the Breviarium Aniani which prohibited the intermarriage of Romans with barbarians. This was abolished so far as to legalize such unions, with the permission of the court by a law of the Visigoths in Spain between 653 and 672. But such an enactment could not have been obligatory in France Whether the Franks ever took Roman wives I cannot say we have as far as I am aware no instance of it in their royal family Proofs might perhaps be found with respect to private families in the Lives of the Saints or if none presumptions to the contrary Troja (Storia d Italia p 1004) says that St. Medard was the offspring of a marriage *between a Frank* and a Roman *mother* before the conquest by Clovis and that the father lived in the Vermandois. Savigny observes that the prohibition could only have existed among the Visigoths, else a woman could not have changed her law

by marriage This however seems rather applicable to Italy than to the north of France where we have no proof of such a regulation Raynouard whose constant endeavor is to elevate the Roman population assumes that they would have disdained intermarriage with barbarians (Hist du Droit Municipal i 258) But the only instance which he adduces strangely enough is that of a Goth with a Frank which we are informed was reckoned to disparage the former It is very likely nevertheless that a Frank Antrustion would not have held himself highly honored by an alliance with either a Goth or a Roman Each nation had its own pride, the conqueror in arms and dominion the conquered in polished manners and ancient renown

At the beginning of the ninth century says M Guizot the essential characteristic is that laws are personal and not territorial At the beginning of the eleventh the reverse prevails except in a very few instances (Leçon 25) But can we approximate no nearer? The territorial element to use that favorite word seems to show itself in an expression of the edict of Pistes 864 — In iis regionibus quæ legem Romanam sequuntur (Capit Car Calvi) This must be taken to mean the south of France where the number of persons who followed any other law may have been inconsiderable relatively to the rest so that the name of the district is used collectively for the inhabitants (Savigny i 162) And this became the *pays du droit écrit* bounded at least in a loose sense by the Loire wherein the Roman was the common law down to the French revolution the laws of Justinian in the progress of learning having naturally taken place of the Theodosian But in the same capitulary we read — De illis qui secundum legem Romanam vivunt nihil aliud nisi quod in iisdem continetur legibus definimus And the king (Charles the Bald) emphatically declares that neither that nor any other capitulary which he or his predecessors had made is designed for those who obeyed the Roman law The fact may be open to some limitation but we have here an express recognition of the continuance of the separate races It seems highly probable that the interference of the bishops still in a great measure of Roman birth and even where otherwise disposed to favor Roman policy contributed to protect the ancient inhabitants from a legislature wherein they were not represented And this strongly corroborates the probability that the Romans had never partaken of the legislative power in the national assemblies

In the middle of the tenth century however according to Sismondi the distinction of races was lost none were Goths or Romans or even Franks but Aquitanians Burgundians Flemings French had become the language of the nation (iii 400) French must here be understood to include Provençal and to be used in opposition to German In this sense the assertion seems to be nearly true and it may naturally have been the consequence that all difference of personal laws had come to an end The feudal customs the local usages of counties and fiefs took as much the lead in northern France as the Roman code still preserved in the south The *pays coutumiers* separated themselves by territorial distinctions from the *pays de droit*[a] Still the instance quoted

[a] A work which I had not seen when this note was written Histoire du Droit Français by M Laferrière (p 85) treats at some length the origin of the customary law of France It was not in any considerable degree borrowed from the barbaric codes nor greatly as he thinks from the Roman law He points out the manifold discrepancies from the former of these But these codes appear to have been in force under Charlemagne The feudal customs which became the sole law on the right bank of the Loire he refers to the ninth and two following centuries And I suppose there can be no doubt of this The spirit of the French customs, both territorial and personal was wholly feudal the Salic code had been compiled on a different motive or leading principle This is very much what took place in England

in my note p 134, from Vaissette (where, at Carcassonne, so late as 918, we find Roman, Goth, and Frank judges enumerated), is a striking evidence that even far to the south, the territorial principle had not yet wholly subverted those privileges of races to which the barbarians, and also the Romans, clung as honorably distinctive

It is only by the force of very natural prejudices, acting on both the polished and the uncivilized, that we can account for the long continuance of this inconvenient separation If the Franks scorned the complex and wordy jurisprudence of Rome, it was just as intolerable for a Roman to endure the rude usages of a German tribe The traditional glory of Rome, transferred by the adoption of that name to the provincials, consoled them in their subjection, and in the continuance of their law, in the knowledge that it was the guarantee of their civil rights against a litigious barbarian though it might afford them but imperfect security against his violence in the connection which it strengthened with the Church (for churchmen of all nations followed it), they found no trifling recommendations of this distinction from the conquerors It seems to be proved that, in lapse of ages, each had gradually borrowed something from the other The melting down of personal into territorial that is, uniform law, as it cannot be referred to any positive enactment or to any distinct period seems to have been the result of such a process The same judges, the counts and *missi*, appear to have decided the controversies of all the subject nations, whether among themselves or one with another Marculfus tells us this in positive terms ' Eos recto tramite secundum legem et consuetudinem eorum regas " (Marculf Formulæ, lib 1 c 8) Nor do we find any separate judges, except the *defensores* of cities who were Romans, but had only a limited jurisdiction It was only as to civil rights as ought to be remarked that the distinction of personal law was maintained The penalties of crime were defined by a law of the state And the same must of course be understood as to military service

Note VI

The German dukes of the Alemanni and Bavarians belonged to once royal families, their hereditary rights may be considered as those of territorial chiefs Again, in Aquitaine, the Merovingian kings had so little authority that the counts became nearly independent But we do not find reason, as far as I am aware to believe any regular succession of a son to his father, in Neustria or Austrasia under the first dynasty much less would Charlemagne have permitted it to grow up It could never have become an established usage except in a monarchy too weak to maintain any of its prerogatives Such a monarchy was that of Charles the Bald I have said that in the famous capitulary of Kiersi in 877 the succession of a son to his father appears to be recognized as a known usage M *Fauriel on the* other hand denies that this capitulary even confirms it at all (Hist de la Gaule Meridionale iv 383) We both therefore agree against the current of French writers who take this for the epoch of hereditary succession It seems evident to me that an usage, sufficient in common parlance to entitle the son

and perhaps more rapidly in the twelfth century, the Norman law with its feudal principle replaced the Anglo Saxon

But a Belgian writer M Raepsaet (Nouveaux Mémoires de l Academie de Bruxelles t 11) contends that the Salic and Ripuarian laws had authority in the Netherlands down to the thirteenth century for towns and for allod al proprietors We find lex Sal ca in several instruments Otho of Frisingen says Lege quæ Sal ca usque ad hæc tempora vocatur nobiliss mos Francorum adhuc uti But this must have been chiefly as to successions

to receive the honor which his father had held, is implied in this capitulary But *the object of the enactment was to provide for the contingency* of a territorial government becoming vacant by death during the intended absence of the Emperor Charles in Italy, and that in cases only where the son of the deceased count should be with the army, or in his minority, or where no son survived 'It is obvious,' Palgrave says, 'that the law relates to the custody of the county or fief during the interval between the death of the father and the investiture of the heir" (English Commonwealth 392) But the case of an heir, that is, a son—for collateral inheritance is excluded by the terms of the capitulary—being of full age and on the spot is not specially mentioned, so that we must presume that he would have assumed the government of the county, awaiting the sovereign's confirmation on his return from the Italian expedition The capitulary should be understood as applicable to temporary circumstances, rather than as a permanent law But I must think that the lineal succession is taken for granted in it [a]

We find that so long at least as the kings retained any power, their confirmation or consent was required on every succession to an honor —that is, a county or other government—though it was very rarely refused. Gaudet (Notices sur Richer, p 62) supposes this to have been the case even in the last reigns of the Caroline family, that is in the tenth century, but this is doubtful, at least as to the southern dukes and counts These honors gradually, after the accession of the house of Capet, assumed a new character, and were confounded together with benefices under the general name of fiefs of the crown The counts, indeed according to Montesquieu and to probability, held beneficiary lands attached to their office (Esprit des Loix xxvi 27)

The county, it may here be mentioned was a territorial division, generally of the same extent as the *pagus* of the Roman empire The latter appellation is used in the Merovingian period and long afterwards The word county, *comitatus*, is said to be rare before 800, but *the royal officer was called comes from the beginning* The *number of pagi* or counties I have not found The episcopal dioceses were 118 in the Caroline period and were frequently, but not always coincident in extent with the civil divisions (See Guerard Cartulaire de Chartres, Prolegomènes, p 6, in Documens Inédits, 1840)

Note VII

A reconsideration of the Merovingian history has led me to doubt whether I may not in my earlier editions like several others, have rather exaggerated the change in the prerogative of the French kings from Clovis to Clotaire II Though the famous story of the vase of Soissons is not insignificant it now seems to me that an excessive stress has sometimes been laid upon it In the first place, there is a general objection to founding a large political theory on any anecdote which proving false, the whole would crumble for want of a basis This, how-

[a] Si comes obierit cujus filius nobis cum sit filius noster cum cæteris fidelibus nostris ordinet de his illi plus familiares et propinquiores fuerint qui cum ministerialibus ipsius comitatus et episcopo ipsum comitatum prævideat usque eum nobis renuntietur Si autem filium parvulum habuerit isdem cum ministerialibus ipsius comitatus et episcopo in cujus parochia consistit eundem comitatum prævideat, donec ad nostram notitiam perveniat. Si vero filium non habuerit filius noster cum cæteris fidelibus nostris ordinet qui cum ministerialibus ipsius comitatus et episcopo ipsum comitatum prævideat donec jussio nostra inde fiat Et pro hoc nullus irascatur si eundem comitatum alteri qui nobis placuerit dederimus, quam illi qui eam hactenus prævidit Seniliter et de vassallis nostris faciendum est (Script Rer Gall vii 701)

ever, is rather a general remark than intended to throw doubt upon the story told by Gregory of Tours, who though he came so long afterwards, and though there is every appearance of rhetorical exaggeration and inexactness in the detail, is likely to have learned the principal fact by tradition or some lost authority[a] But even taking the circumstances exactly according to his relation, do they go much further than to inform us, what our knowledge of barbarian manners might lead any one to presume that the booty obtained by a victory was divided among the army? Clovis was not refused the vase which he requested, the army gave their assent in terms which Gregory, we may well believe, has made too submissive, he took it without regard to the insolence of a single soldier, and revenged himself on the first opportunity The Salian king was, I believe from other evidence, a limited one, he was obliged to consult his army in war, his chief men in peace, but the vase of Soissons does not seem to warrant us in deeming him to have been more limited than from history and analogy we should otherwise infer If, indeed the language of Gregory were to be trusted, the whole result would tell more in favor of the royal authority than against it. And thus Dubos who has written on the principle of believing all that he found in history to the very letter, has interpreted the story

Two French writers, the latter of considerable reputation Boulainvilliers and Mably have contributed to render current a notion that the barbarian kings before the conquest of Gaul, enjoyed scarcely any authority beyond that of leaders of the army And this theory has lately been maintained by two of our countrymen, whose researches have met with great approbation ' It is plain " says Mr Allen the monarchical theory cannot have been derived from the ancient Germans In the most considerable of the German tribes the form of government was republican Some of them had a chief, whom the Romans designated with the appellation of king but his authority was limited and in the most distinguished of their tribes the name as well as the office of king was unknown[b] The supreme authority of the nation resided in the freemen of whom it was composed From them every determination proceeded which affected the general interests of the community, or decided the life or death of any member of the common wealth The territory of the state was divided into districts and in every district there was a chief who presided in its assemblies and with the assistance of the other freemen regulated its internal concerns and in matters of inferior importance administered justice to the inhabitants

This form of government subsisted among the Saxons of the Continent so late as the close of the seventh century and probably continued in existence till their final conquest by Charlemagne Long before that period however the tribes that quitted their native forests and established themselves in the empire had converted the temporary general of their army into a permanent magistrate with the title of king But that the person decorated with this appellation was invested with the attributes essential to royalty in after times is utterly in

a Since this sentence was written I have found the story of the vase of Soissons in Hincmar's Life of St Remi which as I have observed in a former note appears to be taken from a document nearly contemporary with the saint that is with Clovis And this original Life of St Remi preserved only in extracts when Hincmar compiled his own biography of that famous bishop is in all likelihood the basis of whatever Gregory of Tours has recorded concerning the founder of the monarchy very rhetorical and probably not accurate but essentially deserving belief

b This is by no means an unquestionable representation of what Tacitus has said but the language of that historian as has been observed in a former note is not sufficiently perspicuous on this subject of German royalty

haps on the whole is the more probable hypothesis of the two Mr S says (p 267) that lands subject to tribute still continued liable when in the possession of a Frank This is possible but he refers to texts which do not prove it

The next passage which I shall quote is more unequivocal The death of Chilperic exposed his instruments of tyranny as it had Parthenius in Austrasia to the vengeance of an oppressed people Fredegonde though she escaped condign punishment herself could not screen these vile ministers — Habebat tunc temporis secum Audonem judicem qui et tempore regis in multis consenserat malis Ipse enim cum Mummolo præfecto multos de Francis qui tempore Childeberti regis senioris ingenui fuerant publico tributo subegit Qui post mortem regis Chilperici ab ipsis spoliatus ac denudatus est ut nihil ei præter quod super se vulerre potuit remaneret Domos enim ejus incendio subdiderunt abstulissent utique et ipsam vitam ni cum regina ecclesiam expetisset (Lib vii c 15) The word *ingenui* in the above passage means the superior class—allodial landholders or beneficiaries as distinguished from the class named *lidi* who are also perhaps sometimes called *tributarii* as well as the Romans and from whom a public *census* as some think was due We may remark here that the removing of a number of Franks from their own place as *ingenui* to that of tributaries was a particular act of oppression and does not stand quite on the footing of a general law The passage in Gregory is chiefly important as it shows that the *ingenui* were not legally subject to public tribute

M Guizot has adduced a constitution of Clotaire II in 615 as a proof that endeavors had been made by the kings to impose undue taxes This contains the following article Ut ubicunque census novus impie additus est et a populo reclamatur justa inquisitione misericorditer emendetur (C 8) But does this warrant the inference that any tax had been imposed on the free born Frank? *Census'* is generally understood to be the capitation paid by the *tributarii* and the words imply a local exaction rather than a national imposition by the royal authority It is not even manifest that this provision was founded exclusively on any oppression of the crown several other articles in this celebrated law are extensively remedial and forbid all undue spoliation of the weak But if we should incline to Guizot's interpretation it will not prove of course the right of the kings to impose taxes on the Franks since that to which it adverts is called *census novus impie additus*

The inference which I formerly drew from the language of the laws is inconclusive Bouquet in the Recueil des Historiens (vol iv) admits only seven laws during the Merovingian period differing from Baluze as to the particular sovereigns by whom several of them were enacted Of these the first is by Childebert I king of Paris in 532 according to him by Childebert II of Austrasia according to Baluze which as the date is Cologne and several Austrasian cities are mentioned in it which never belonged to the first Childebert I cannot but think more likely This constitution has *unà cum nostris optimatibus* and *convenit unà leudis nostris* And the expressions lead to two inferences first that the assembly of the Field of March was in that age annually held secondly that it was customary to send round to the people the determinations of the optimates in this council — Cum nos omnes calendas Martias de quascunque conditiones unà cum optimatibus nostris pertractavimus ad unumquemque notitiam volumus pervenire The grammar is wretched but such is the evident sense

The second law as it is called is an agreement between Childebert and Clotaire the first of each name according to Bouquet the second according to Baluze This wants all enacting words except Decretum

est" The third is an ordinance of Childebert for abolishing idolatrous rites and keeping festivals It is an enforcement of ecclesiastical regulations not perhaps reckoned at that time to require legislative sanction The fourth of Clotaire I or Clotaire II begins Decretum est and has no other word of enactment But this does not exclude the probability of consent by the leudes Clotaire I, in another constitution, speaks authoritatively But it will be found on reading it that none except his Roman subjects are concerned The sixth is merely a precept of Gontran directed to the bishops and judges enjoining them to maintain the observance of the Lord's day and other feasts The last is the edict of Clotaire II in 615 already quoted and here we read —

Hanc deliberationem quam cum pontificibus vel tam magnis viris optimatibus aut fidelibus nostris in synodali concilio institutimus

After 615 no law is extant enacted in any of the Frank kingdoms before the reign of Pepin This however cannot of itself warrant the assertion that none were enacted which do not remain It is more surprising perhaps that even a few have been preserved The language of Childebert above cited leads to the belief that in the sixth century, whatever we may suppose as to the next an assembly with powers of legislation was regularly held by the Frank sovereigns Nothing on the whole warrants the supposition that the three generations after Clovis possessed an acknowledged right either of legislating for their Frank subjects or imposing taxes upon them But after the assassination of Sigebert under the walls of Tournay in 575 the Austrasian nobles began to display a steady resistance to the authority which his widow Brunehaut endeavored to exercise in her son's name This after forty years terminated in her death and in the reunion of the Frank monarchy with a much more aristocratic character than before under the second Clotaire It is a revolution to which we have already drawn attention in the note on Brunehaut

Note VIII

'The existence' says Savigny of an original nobility as a particular patrician order and not as a class indefinitely distinguished by their wealth and nobility cannot be questioned It is difficult to say from what origin distinction may have proceeded whether it was connected with the services of religion or with the possession of the heritable offices of counts We may affirm however with certainty that the honor enjoyed was merely personal and conferred no preponderance in the political or judicial systems (Ch iv p 172 English translation) This admits all the theory to which I have inclined in the text namely the non existence of a privileged order though antiquity of family was in high respect The *eorl* of Anglo Saxon law was it may be said distinguished by certain privileges from the *ceorl* Why could not the same have been the case with the Franks? We may answer that it is by the laws and records of those times that we prove the former distinction in England and it is by the absence of all such proof that the non existence of such a distinction in France has been presumed But if the *lidi* of whom we so often read were Franks by origin and moreover personally free which to a certain extent we need not deny they will be the corresponding rank to the Anglo Saxon *ceorl* superior as from whatever circumstances the latter may have been in his social degree. All the *Franci ingenui* will thus have constituted a class of nobility in no other sense however than all men of white race constitute such a class in those of the United States where slavery is abolished which is not what we usually mean by the word In some German

Mr Allen observes with respect to the formula of Marculfus quoted in my note p 130 — Some authors have considered this as a precedent for the grant of an hereditary benefice But it is only necessary to read with attention the act itself to perceive that what it creates is not an hereditary benefice but an allodial estate It is viewed in this light in his (Bignon s) notes on a subsequent formula (sect 17) confirmatory of what had been done under the preceding one and it is only from inadvertence that it could have been considered in a different point of view (Inquiry into Royal Prerogative Appendix p 47) But Bignon took for granted that benefices were only for term of life and consequently that words of inheritance in the age of Marculfus implied an allodial grant The question is What constituted a benefice? Was it not a grant by favor of the king or other lord? If the words used in the formula of Marculfus are inconsistent with a beneficiary property we must give up the inference from the treaty of Andely and from all other phrases which have seemed to convey hereditary benefices It is true that the formula in Marculfus gives a larger power of alenation than belonged afterwards to fiefs but did it put an end to the peculiar obligation of the holder of the benefice towards the crown? It does not appear to me unreasonable to suppose an estate so conferred to have been strictly a benefice according to the notions of the seventh century

Subinfeudation could hardly exist to any considerable degree until benefices became hereditary But as soon as that change took place the principle was very natural and sure to suggest itself It prodigiously strengthened the aristocracy of which they could not but be aware and they had acquired such extensive possessions out of the royal domain that they could well afford to take a rent for them in iron instead of silver Charlemagne as Guizot justly conceives strove to counteract the growing feudal spirit by drawing closer the bonds between the sovereign and the subject He demanded an oath of allegiance as *William afterwards did in England from the vassals of* mesne lords But after his death and after the complete establishment of an hereditary right in the grants of the crown it was utterly impossible to prevent the general usage of subinfeudation

Mably distinguishes the lands granted by Charles Martel to his German followers from the benefices of the early kings reserving to the former the name of fiefs These he conceives to have been granted only for life and to have involved for the first time the obligation of military service (Observat ons sur l Hist de France vol i p 32) But as they were not styled fiefs so early but only benefices this distinction seems likely to deceive the reader and the oath of fidelty taken by the Antrustion which though personal could not be a weaker obligation after he had acquired a benefice carries a very strong presumption that military service at least in defensive wars not always distinguishable from wars to revenge a wrong as most are presumed to be was demanded by the usages and moral sentiments of the society We have not a great deal of testimony as to the grants of Charles Martel but in the capitularies of Charlemagne it is evident that all holders of benefices were bound to follow the sovereign to the field

M Guérard (Cartulaire de Chartres i 23) is of opinion that though benefices were ultimately fiefs in the first stage of the monarchy they were only usufructs and the word will not be clearly found in the restrained sense during that period Cette différence entre deux institutions nées l une de l autre quoique assez délicate etait essentielle Elle ne pourrait etre meconnue que par ceux qui considereraient seulement les benefices à la fin et les fiefs au commencement de leur existence alors en effet les uns et les autres se confondaient That they were not mere usufructs even at first appears to me more probable

Note X

Somner says that he has not found the word feudum anterior to the year 1000 and that Muratori a still greater authority doubts whether it was used so early I have however observed the words feum and fe vum which are manifestly corruptions of feudum in several charters about 960 (Vaissette Hist. de Languedoc t ii Appendix p 107 128 et alibi) Some of these fiefs appears not to have been hereditary But independently of positive instances can it be doubted that some word of barbarous original must have answered in the vernacular languages to the Latin beneficium? See Du Cange v Feudum Sir F Palgrave answers this by producing the word *lehn* (English Commonwealth ii 208) And though M Thierry asserts (Recits des Temps Merovingi ens i 245) that this is modern German he seems to be altogether mis taken (Palgrave ibid) But when Sir F Palgrave proceeds to say—

The essential and fundamental principle of a territorial fief or feud is that the land is held by a limited or conditional estate—the property being in the lord, and the usufruct in the tenant we must think this not a very exact definition of feuds in their mature state however it might apply to the early benefices for life The property by feudal law was I conceive strictly in the tenant what else do we mean by fee simple? Military service in most cases and always fealty were due to the lord and an abandonment of the latter might cause forfeiture of the land but the tenant was not less the owner and might destroy it or render it unprofitable if he pleased.

Feudum Sir F Palgrave boldly derives from *emphyteusis* and in fact by processes familiar to etymologists that is cutting off the head and legs and extracting the back bone it may thence be exhibited in the old form *feum* or *fevum* M Thierry however thinks *feh* that is fee or pay and *odh* property to be the true root. (Lettres sur l Hist. de France Lettre x.) Guizot inclines to the same derivation and it is in fact given by Du Cange and others The derivation of *alod* from *all* and *odh* seems to be analogous and the word *udaller* for the freeholder of the Shetland and Orkney Isles strongly confirms this derivat on being only the two radical elements reversed as I remem ber to have seen observed in Gilbert Stuart s View of Society A char ter of Charles the Fat is suspected on account of the word feudum which is at least of very rare occurrence till late in the tenth century The great objection to *emphyteusis* is that a fief is a different thing Sir F Palgrave indeed contends that an emphyteusis is often called a precaria and that the word precaria was a synonym of bene ficium as beneficium was of feudum But does t appear from the ancient use of the words precaria and beneficium that they were convertible as the former is said by Muratori and Lehuerou to have been with emphyteusis? (Murat Antiq Ital Diss xxxvi Lehuerou Inst. Caroling p 183) The tenant by *emphyteusis* whom we find in the Codes of Theodosius and Justin an was l ttle more than a *colonus* a demi serf attached to the soil though incapable of being d spossessed Is this like the holder of a benefice the progen tor of the great feudal aristocracy? How can we compare emphyteusis w th beneficium with out remembering that one was commonly a grant for a fixed return in value answering to the terræ censuales of later times and the lat ter as the word impl es a free donation with no cond tion but grat tude and fidel ty? The word *precaria* is for the most part applied to ec clesiastical property which by some usurpation had fallen into the hands of laymen These afterwards by way of compromise were per mitted to cont nue as tenants of the church for a limited term generally of l fe on payment of a fixed rate Marculfus however gives a form in

which the grantor of the precaria appears to be a layman Military service was not contemplated in the emphyteusis or the precaria, nor was either of them a perpetuity, at least this was not their common condition Meyer derives feudum from *fides* quoting Aimoin "Leudibussus *in fide disposuit*" (*Inst Judic* i 187)

NOTE XI

M Guizot, with the highest probability, refers the conversion of allodial into feudal lands to the principle of commendation. (Essais sur l Hist de France p 166) Though originally this had no relation to land but created a merely personal tie—fidelity in return for protection—it is easy to conceive that the allodialist who obtained this privilege, as it might justly appear in an age of rapine, must often do so by subjecting himself to the law of tenure—a law less burdensome at a time when warfare if not always defensive, as it was against the Normans, was always carried on in the neighborhood, at little expense beyond the ravages that might attend its want of success Raynouard has published a curious passage from the Life of St Gerald a Count of Aurillac where he is said to have refused to subject his allodial lands to the Duke of Guienne, *with the exception of one farm, peculiarly situated* Erat enim semotim inter pessimos vicinos longe a caeteris disparatum" His other lands were so situated that he was able to defend them Nothing can better explain the principle which riveted the feudal yoke upon allodialists (Hist du Droit Municipal ii 261)

In my text, though M Guizot has done me the honor to say, "M Montlosier et M Hallam en ont mieux demele la nature et les causes," the subject is not sufficiently disentangled, and the territorial character *which commendation ultimately assumed is too much separated from* the personal The latter preceded even the conquest of Gaul, both among the barbarian invaders themselves and the provincial subjects [a] and was a sort of *clientela*, [b] but the former deserves also the name of commendation though the Franks had a word of their own to express it We find in Marculfus the form by which the king took an ecclesiastical person, with his property and followers under his own *mundeburde* or safeguard (Lib i c 44) This was equivalent to commendation, or rather another word for it except as one rather expresses the act of the tenant the other that of the lord Letters of safeguard were not by any means confined to the church They were frequent as long as the crown had any power to protect and revived again in the decline

a M Lehuerou has gone very deeply into the *mundium* or personal safeguard by which the inferior class among the Germans were commended to a lord and placed under his protection in return for their own fidelity and service (Institutions Carolingiennes liv i ch i sec 2) It is a subject as he conceives of the highest *importance in these inquiries being* in fact the real origin of the feudal polity afterwards established in Europe though from the circumstances of ancient Germany it was of necessity a personal and not a territorial vassalage It fell in very naturally with the similar principle of commendation existing in the Roman empire This bold and original theory however has not been admitted by his contemporary antiquaries M Giraud and M Mignet (Séances et Travaux de l Académie des Sciences Morales et Politiques pour Novembre 1843) especially the latter, dissent from this explication of the origin of feudal polity which was in no degree of a domestic character The utmost they can allow is that territorial jurisdiction was extended to feudal vassals by analogy to that which the patron or chief of the *mundium* had exercised over those who recognized him as protector as well as over his family and servants There is nevertheless perhaps a larger basis of truth in M Lehuerous system than they admit though I do not conceive it to explain the whole feudal system

b Garnier has happily adduced a very ancient authority for this use of the word

Thais patri se commendavit in clientelam et fidem
Nobis dedit se —Ter Eun Act 5

Origine du Gouvernement Français (n Leber ii 194)

of the feudal system Nor were they limited to the crown, we have the form by which the poor might place themselves under the *mundeburde* of the rich, still being free, "ingenuili ordine servientes" Formulæ Veteres Bignonii, c 44 vide Naudet ubi supra They were then even sometimes called as the latter supposes, *lidi* or *liti* so that a freeman, even of the higher class, might, at his option fall for the sake of protection, into an inferior position

I have no hesitation in agreeing with Guizot that the conversion of allodial into feudal property was nothing more than an extension of the old commendation It was not necessary that there should be an express surrender and regrant of the land, the acknowledgment of seigniory by the *commendatus* would supply the place M Naudet (Nouv Mem de l Acad des Inscrip vol viii) accumulates proofs of commendation, it is surprising that so little was said of it by the earlier antiquaries One of his instances deserves to be mentioned Isti homines," says a writer of Charlemagne's age 'fuerunt liberi et ingenui, sed quod militiam regis non valebant exercere, tradiderunt alodos suos sancto Germano' [c] (P 567) We may perhaps infer from this that the tenants of the church were not bound to military service "No general law," says M Guizot (Collect de Mem i 419), 'exempted them from it, but the clergy endeavored constantly to secure such an immunity either by grant or by custom which was one cause that their tenants were better off than those of laymen' The difference was indeed most important and must have prodigiously enhanced the wealth of the church But after the feudal policy became established we do not find that there was any dispensation for ecclesiastical fiefs The advantage of their tenants lay in the comparatively pacific character of their spiritual lords It may be added that from many passages in the laws of the Saxons Alemanns and Barvarians, all the "commendati' appear to have been denominated vassals whether they possessed benefices or not That word afterwards implied a more strictly territorial limitation

Thus then let the reader keep in mind that the feudal system as it is commonly called was the general establishment of a peculiar relation between the sovereign (not as king but as lord) and his immediate vassals, between these again and others standing to them in the same relation of vassalage and thus frequently through several links in the chain of tenancy If this relation and especially if the latter and essential element subinfeudation is not to be found there is no feudal system though there may be analogies to it more or less remarkable or strict. But if he asks what were the immediate causes of establishing this polity we must refer him to three alone—to the grants of beneficiary lands to the vassal and his heirs without which there could hardly be subinfeudation to the analogous grants of official honors particularly that of count or governor of a district and lastly to the voluntary conversion of allodial into feudal tenure through free landholders submitting their persons and estates by way of commendation to a neighboring lord or to the count of a district All these though several instances especially of the first occurred much earlier belong generally to the ninth century and may be supposed to have been fully accomplished about the beginning of the tenth—to which period therefore and not to an earlier one, we refer the feudal system in France We say in France because our attention has been chiefly directed to that kingdom, in none was it of earlier origin but in some it cannot be traced so high

An hereditary benefice was strictly a fief at least if we presume it

[c] It will be remarked that *liberi* and *ingenui* appear here to be distinguished ' not only free but gentlemen.'

to have implied military service hereditary governments were not something more therefore was required to assimilate these which were far larger and more important than donations of land And perhaps it was only by degrees that the great chiefs especially in the south who in the decay of the Caroline race established their patrimonial rule over extensive regions condescended to swear fealty and put on the condition of vassals dependent on the crown Such at least is the opinion of some modern French writers who seem to deny all subjection during the evening of the second and dawn of the third race But if they did not repair to Paris or Laon in order to swear fealty they kept the name of the reigning king in their charters

The hereditary benefices of the ninth century or in other words fiefs preserved the nominal tie and kept France from utter dissolution They deserve also the greater praise of having been the means of regenerating the national character and giving its warlike bearing to the French people not indeed as yet collectively but in its separate centres of force after the pusillanimous reign of Charles the Bald They produced much evil and misery but it is reasonable to believe that they prevented more France was too extensive a kingdom to be governed by a central administration unless Charlemagne had possessed the gift of propagating a race of Alfreds and Edwards instead of Louis the Stammerers and Charles the Balds Her temporary disintegration by the feudal system was a necessary consequence without that system there would have been a final dissolution of the monarchy and perhaps its conquest by barbarians

Note XII

M Thierry whose writings display so much antipathy to the old nobility of his country that they ought not to be fully trusted on such a subject observes that the Franks were more haughty towards their subjects than any other barbarians as is shown in the difference of *weregild* From them this spirit passed to the French nobles of the middle ages though they were not all of Frank descent L exces d orgueil attache a longtemps au nom de gentilhomme est ne en *France son foyer comme celui de l organization feodale fut la Gaule* du Centre et du Nord et peut etre aussi l Italie Lombarde C est de la qu il s est propage dans les pays Germaniques ou la noblesse anterieurement se distinguait peu de la simple condition d homme libre Ce mouvement crea partout ou il s etendit deux populations et comme deux nations proprement distinctes (Recits des Temps Merovingiens 1 250)

The feudal principle was essentially aristocratic and tended to enhance every unsocial and unchristian sentiment involved in the exclusive respect *for birth It had of course its countervailing virtues* which writers of M Thierry s school do not enough remember But a rural aristocracy in the meridian of feudal usages was insulated in the midst of the other classes of society far more than could ever happen *in cities or in any* period of an advanced civilization *Never* says Guizot had the primary social molecule been so separated from other similar molecules never had the distance been so great between the simple and essential elements of society The chatelain amidst his machicolated battlements and massive gates with their iron portcullis received the vavassor though as an inferior at his board but to the roturier no feudal board was open the owner of a terre censive the opulent burgess of a neighboring town was as little admitted to the banquet of the lord as he was allowed to unite himself in marriage to his family

Nec Deus hunc mensa, Dea nec dignata cubili est.

Pilgrims indeed and travelling merchants may if we trust romance have been always excepted Although therefore some of Guizot s phrases seem overcharged since there was in fact more necessary in tercourse between the different classes than they intimate yet that of a voluntary nature and what we peculiarly call social was very limited Nor is this surprising when we recollect that it has been so till com paratively a recent period

Guizot has copied a picturesque description of a feudal castle in the fourteenth century from Monteil s Histoire des Français des divers Etats aux cinq derniers Siecles It is one of the happiest passages in that writer hardly more distinguished by his vast reading than by his skill in combining and applying it though sometimes bordering on tediousness by the profuse expenditure of his commonplace books on the reader

Representez vous d abord une position superbe une montagne es carpee herisse de rochers sillone de ravins et de precipices sur le penchant est le chateau Les petites maisons qui l entourent enfont ressortir la grandeur l Indre semble s ecarter avec respect elle fait un large demi cercle a ses pieds

Il faut voir ce chateau lorsqu au soleil levant ses galeries exterieures reluisent des armures de ceux qui font le guet et que ses tours se mon trent toutes brillantes de leurs grandes grilles neuves Il faut voir tous ces hauts batiments qui remplissent de courage ceux qui les defendent et de frayeur ceux qui seraient tentes de les attaquer

La porte se presente toute couverte de tetes de sangl ers ou de loups flanquee de tourelles et couronnee d un haut corps de garde Entrez vous? trois encientes trois fosses trois pont levis à passer vous vous trouverez dans la grande cour carree ou sont les citernes et a droite ou a gauche les ecuries les poulaillers les colombiers les remises Les caves les souterrains les prisons sont par dessous par dessus sont les logements les magasins les lardoirs ou saloirs les arsenaux Tous les combles sont bordes des machicoulis des parapets des chemins le ronde des guerites Au milieu de la tour est le donjon qui renferme les archives et le tresor Il est profondement fossoye dans tout son pourtour et on n y entre que par un pont presque toujours leve b en que les murailles aient comme celles du chateau plus de six pieds d epaisseur il est revetu jusqu a la moitie de sa hauteur d une chemise ou second mur en grosses pierres de taille

Ce chateau vient d etre refait a neuf Il y a quelque chose de leger de frais que n avaient pas les chateaux lourds et massifs des siecles passes (Civilis en France Leçon 35)

And this was true for the castles of the tenth and eleventh centuries wanted all that the progress of luxury and the cessation or nearly such of private warfare had introduced before the age to which this descrip tion refers they were strongholds and nothing more dark small comfortless where one thought alone could tend to dispel their gloom that life and honor and what was most valuable in goods were more secure in them than in the campaign around

Note XIII

M Guizot has declared it to be the most difficult of questions relating to the state of persons in the period from the fifth to the tenth century whether there existed in the countries subdued by the Germans and especially by the Franks a numerous and important class of freemen not vassals either of the king or any other proprietor nor any way de pendent upon them and with no obligation except towards the state its laws and magistrates (Essais sur l Hist de France p 232) An

this question contrary to almost all his predecessors he inclines to decide negatively It is indeed evident and is confessed by M Guizot that in the ages nearest to the conquest such a class not only existed but even comprised a large part of the nation Such were the owners of *sortes* or of *terra Salica* the allodialists of the early period It is also agreed as has been shown in another place that towards the tenth century the number of these independent landholders was exceedingly diminished by territorial commendation that is the subjection of their lands to a feudal tenure The last of these changes however cannot have become general under Charlemagne on account of the numerous capitularies which distinguish those who held lands of their own or allodia from beneficiary tenants The former therefore must still have been a large and important class What proportion they bore to the whole nation at that or any other era it seems impossible to pronounce and equally so to what extent the whole usage of personal commendation contradistinguished from territorial may have reached Still allodial lands as has been observed were always very common in the south of France to which Flanders might be added The strength of the feudal tenures as Thierry remarks was between the Somme and the Loire (Recits des T M 1 245) These allodial proprietors were evidently freemen In the law of France allodial lands were always noble like fiefs till the reformation of the Coutume de Paris in 1580 when aleux roturiers were for the first time recognized I owe this fact which appears to throw some light on the subject of this note to Laferriere Hist du Droit Français p 129 But perhaps this was not the case in Flanders which was an allodial country — La maxime française nulle terre sans seigneur n avait point lieu dans les Pays Bas On s en tenait au principe de la liberte naturelle des biens et par suite à la necessité d en prouver la sujétion ou la servitude aussi les biens allodiaux etaient tres nombreux et rappelaient toujours l esprit de liberte que les Belges ont aime et conservé tant a l egard de leurs biens que de leurs personnes (Mém de l Acad de Bruxelles vol III p 16) It bears on this that in all the customary law of the Netherlands no preference was given to sex or primogeniture in succession (p 21)

But there were many other freemen in France even in the tenth century if we do not insist on the absolute and insulated independence which Guizot requires If we must understand says M Guerard (Cartulaire de Chartres p 34) by freemen those who enjoyed a liberty without restriction that is who owing no duties or service to any one could go and settle wherever they pleased they would not be found very numerous in our chartulary during the pure feudal regimen But if as we should we comprehend under this name whoever is neither a noble nor a serf the number of people in this intermediate condition was very considerable And of these he specifies several varieties This was in the eleventh century and partly later when the conversion of allodial property had been completed

Savigny was the first who proved the Arimanni of Lombardy to have been freemen corresponding to the Rachimburgii of the Franks and distinguished both from bondmen and from those to whom they owed obedience Citizens are sometimes called Arimanni The word occurs though very rarely out of Italy (Vol 1 p 176 English translation) Guizot includes among the Arimanni the leudes or beneficiary vassals See too Troya v 146 148 There seems indeed no reason to doubt that vassals and other *commendati* would be counted as Arimanni Neither feudal tenure nor personal commendation could possibly derogate from a free and honorable *status*

Note XIV

These names though in a general sense occupying similar positions in the social scale denote different persons The coloni were Romans in the sense of the word then usual that is they were the cultivators of land under the empire of whom we find abundant notice both in the Theodosian Code and that of Justinian [a] An early instance of this use of the word occurs in the Historiæ Augustæ Scriptores Trebellius Pollio says after the great victory of Claudius over the Goths where an immense number of prisoners was taken— Factus miles barbarus ac colonus ex Gotho an expression not clear and which perplexed Salmasius But it may perhaps be rendered the barbarians partly entered the legions partly cultivated the ground in the rank of coloni It is thus understood by Troja (II 705) He conceives that a large proportion of the coloni mentioned under the Christian emperors were barbarian settlers (III 1074) They came in the place of prædial slaves who though not wholly unknown grew less common after the establishment of Christianity The Roman colonus was free he could marry a free woman and have legitimate children he could serve in the army and was capable of property his peculium unlike that of the absolute slave could not be touched by his master Nor could his fixed rent or duty be enhanced. He could even sue his master for any crime committed with respect to him or for undue exaction He was attached on the other hand to the soil and might in certain cases receive corporal punishment (Troja III 1074) He paid a capitation tax or census to the state the frequent enhancement of which contributed to that decline of the agricultural population which preceded the barbarian conquest *Guizot in whose thirty seventh lecture on* the civilization of France the subject is well treated derives the origin *of this state of society from that of Gaul before the Roman conquest* But since we find it in the whole empire as is shown by many laws *in the Code of Justinian* we may look on it perhaps rather as a modification of ancient slavery unless we suppose *all* the coloni [b] in this latter *sense of the word* to have been originally barbarians who had received lands on condition of remaining on them But this however frequent seems a basis not quite wide enough for so extensive a tenure. Nor need we believe that the coloni were always raised from slavery they might have descended into their own order as well as risen to it It appears by a passage in Salvian about the middle of the fifth century that many freemen had been compelled to fall into this condition which confirms by analogy the supposition above mentioned of M Naudet as to a similar degradation of a part of the Franks themselves after the conquest It was an inferior species of commendation or vassalage or more strictly an analogous result of the state of society

The forms of *Marculfus and all the documents of the following ages* furnish abundant proofs of the continuance of the coloni in this middle state between entire freedom and servitude And these were doubtless reckoned among the tributarii of the Salic law whose composition was fixed at forty five solidi for a slave had no composition due to his kindred he was his master's chattel and to be paid for as such But the tributary was not necessarily a colonus All who possessed no lands were subjected by the imperial fisc to a personal capitation And it has appeared to us that the Romans in Gaul continued regularly to pay this under the house of Clovis To these Roman tributaries the bar

[a] See Cod. Theod. I. v. tit. 9. with the copious Paratitlon of Gothofred.— Cod. Just. xi. tit. 47 et al.

[b] The colonus of Cato and other classical authors was a free tenant or farmer as has been already mentioned.

barian lidi seem nearly to have corresponded This was a class as has been already said not quite freeborn so that Francus ingenuus was no tautology, as some have fancied yet far from slaves without political privileges or rights of administering justice in the county court like the Rachimburgii and so little favored that while the Frank accused of a theft that is I presume taken in the fact was to be brought before his peers the lidus under the name of debilior persona which probably included the Roman tributary was to be hanged on the spot Throughout the Salic and Ripuarian codes the ingenuus is opposed both to the lidus and to the servus so that the threefold division is incontestable It corresponds in a certain degree to the *edelingi frilingi* and *lazzi* or the *corl ceorl* and *thrall* of the northern nations (Grimm Deutsche Rechts Alterthumer p 306 *et alibi*) though we do not find a strict proportion in the social state of the second order in every country The coloni partiarii frequently mentioned in the Theodosian Code were *metayers*, and M Guerard says that lands were chiefly held by such in the age of Charlemagne and his family (Cart de Chartres i 109) The demesne lands of the manor however, were never occupied by coloni but by serfs or domestic slaves

Note XV

The poor early felt the necessity of selling themselves for subsistence in times of famine Subdiderunt se pauperes servitio says Gregory of Tours A D 585 ut quantulumcunque de alimento porrigerent (Lib vii c 45) This long continued to be the practice and probably the remarkable number of famines which are recorded especially in the ninth and eleventh centuries swelled the sad list of those unhappy poor who were reduced to barter liberty for bread Mr Wright in the thirtieth volume of the Archæologia (p 223) has extracted an entry from an Anglo Saxon manuscript where a lady about the time of the Conquest, manumits some slaves whose heads as it is simply and forcibly expressed she had taken for their meat in the evil days Evil indeed were those days in France when out of seventy three years the reigns of Hugh Capet and his two successors forty eight were years of famine Evil were the days for five years from 1015 in the whole western world when not a country could be named that was not destitute of bread These were famines as Radulfus Glaber and other contemporary writers tell us in which mothers ate their children and children their parents and human flesh was sold with some pretence of concealment in the markets It is probable that England suffered less than France but so long and frequent a scarcity of necessary food must have affected in the latter country the whole organic frame of society

It has been a very general opinion that during the lawlessness of the ninth and tenth centuries the aristocratic element of society continually gaining ground the cultivators fell into a much worse condition and either from freemen became villeins or if originally in the order of tributaries became less and less capable of enjoying such personal rights as that state implied that they fell in short almost into servitude Dans le commencement de la troiseme race says Montesquieu presque tout le bas peuple etait serf (Lib xxviii c 45) Sismondi who never draws a favorable picture not only descants repeatedly on this oppression of the commonalty but traces it by the capitularies Les loix seules nous donnent quelque indication d une revolut on importante à laquelle la grande masse du peuple fut exposee à plusieurs reprises dans toute l etendue des Gaules —

revolution qui, s etant operee sans violence n a laisse aucune trace dans l histoire et qui doit cependant expliquer seule les alternatives de force et de faiblesse dans les etats du moyen age C est le passage des cultivateurs de la condition libre a la condition servile L esclavage etant une fois introduite et protegee par les loix la consequence de la prosperite de l accroissement des richesses devait etre *toujours la disparition de toutes les petites proprietes la multiplication* des esclaves et la cessation absolue de tout travail qui ne serait pas fait par des mains serviles (Hist des Français vol II p 273) Nor should we have believed from the general language of historical antiquaries that any change for the better took place till a much later era We know indeed from history that about the year 1000 the Norman peasantry excited by oppression broke out into a general and well organized revolt quelled by the severest punishments This is told at some length by Wace in the *Roman de Rou* And every inference from the want of all law except what the lords exercised themselves, from the strength of their castles from the fierceness of their characters from the apparent inability of the peasants to make any resistance which should not end in greater sufferings converges to the same result

It is not therefore without some surprise that in a recent publication we meet with a totally opposite hypothesis on this important portion of social history The editor of the Cartulaire de Chartres maintains that the peasantry at the beginning of the eleventh century enjoyed rights of property and succession which had been denied to their ancestors that the movement from the ninth century had been upwards so that during that period of anarchy which we presume to have been exceedingly unfavorable to their privileges they had in reality by force usage or concession gained possession of them They could not indeed leave their lands but they occupied them subject to known conditions

The passage wherein M Guerard in a concise and perspicuous manner has given his own theory as to the gradual decline of servitude deserves to be extracted but I regret very much that he refers to another work not by name and unknown to me for the full proof of what has the air of an historical paradox With sufficient proof every paradox loses its name and I have not the least right from any deep researches of my own to call in question the testimony which has convinced so learned and diligent an inquirer

La servitude comme je l ai expose dans un autre travail alla toujours chez nous en s adoucissant jusqu à ce qu elle fut entierement abolie à la chute de l ancien regime d abord c est l esclavage a peu pres pur, qui reduisait l homme presque à l etat de chose et qui le mettait dans l entiere dependance de son maitre Cette periode peut etre prolongee jusqu apres la conquete de l empire d Occident par les barbares Depuis cette epoque jusques vers la fin du regne de Charles le Chauve l esclavage proprement dit est remplace par la servitude dans laquelle la condition humaine est reconnue respectee protegee si ce n est encore d une maniere suffisante par les loix civiles au moins plus efficacement par celles de l eglise et par les *mœurs sociales* Alors le pouvoir de l homme sur son semblable est contenu generalement dans certains limites un frein est mis d ordinaire à la violence la regle et la stabilite *l emportent sur l arbitraire bref la liberté* et la propriété penetrent par quelque endroit dans la cabane du serf Enfin pendant le desordre d ou sortit triomphant le regime feodal le serf soutient contre son maitre la lutte soutenue par le vassal contre son seigneur et par les seigneurs contre le roi Le succès fut le meme de part et d autre l usurpation des tenures serviles accompagna celle des tenures liberales et l appropriation territoriale ayant

authority of these general meetings, wherein the capitularies of Charlemagne were enacted Grant, against Mably, that they were not a democratic assembly; still were they not a legislature? "Lex consensu fit populi et constitutione regis" This is our own statute language, but does it make parliament of no avail? "En lui (Charlemagne) réside la volonte et l'impulsion, c'est de lui que toute emane pour revenir a lui" (Essais sur l'Hist de France, p 323) This is only to say that he was a truly great man, and that his subjects were semi-barbarians, comparatively unfit to devise methods of ruling the empire No one can doubt that he directed everything But a weaker sovereign soon found these rude nobles an overmatch for him It is, moreover, well pointed out by Sir F Palgrave, that we find instances of petitions presented by the lay or spiritual members of these assemblies to Charlemagne, upon which capitularies or edicts were afterwards founded (English Commonwealth II 411) It is to be inferred, from several texts in the capitularies of Charlemagne and his family, that a general consent was required to their legislative constitutions, and that without this a capitulary did not become a law It is not, however, quite so clear in what method this was testified, or rather two methods appear to be indicated One was that above described by Hincmar, when the determination of the *seniores* was referred to the *minores* for their confirmation "interdum pariter tractandum, et non ex potestate sed ex proprio mentis intellectu vel sententia confirmandum" The point of divergence between two schools of constitutional antiquaries in France is on the words *ex potestate* Mably, and others whom I have followed, say "not by compulsion" or words to that effect But Guizot renders the words differently "quelquefois on deliberait aussi, et les confirmaient, non par un consentement formal, mais par leur opinion, et l'adhesion de leur intelligence" The Latin idiom will I conceive, bear either construction But the context, as well as the analogy of other authorities, inclines me to the more popular interpretation which, though the more popular, does not necessarily carry us beyond the word *majores*, taking that as descriptive of a numerous aristocracy

If, indeed, we are so much bound by the *majorum* in this passage of Hincmar as to take for merely loose phrases the continual mention of the *populus* in the capitularies, we could not establish any theory of popular consent in legislation from the general placita held almost every May by Charlemagne They would be conventions of an aristocracy, numerous indeed and probably comprehending by right all the vassals of the crown, but excluding the freemen or petty allodialists, not only from deliberating upon public laws but from consenting to them We find, however, several proofs of another method of obtaining the ratification of this class that is of the Frank people I do not allude to the important capitulary of Louis (though I cannot think that M Guizot has given it sufficient weight), wherein the count is directed to bring twelve Scabini with him to the imperial placitum, because we are chiefly at present referring to the reign of Charlemagne, and yet this provision looks like one of his devising The scheme to which I refer is different and less satisfactory The capitulary determined upon by a national placitum was sent round to the counts, who were to read it in their own *mallus* to the people, and obtain their confirmation Thus in 803. "Anno tertio clementissimi domini nostri Karoli Augusti, sub ipso anno hæc facta capitula sunt et consignata Stephano comiti, ut hæc manifesta faceret in civitate Parisius, mallo publico, et illa legere faceret coram Scabinis, quod ita et fecit Et omnes in uno consenserunt, quod ipsi voluissent omni tempore observare usque in posterum Etiam omnes Scabini, Episcopi Abbates, Comites manu propria subter signaverunt' (Rec des Hist v 663) No text can be

more perspicuous than this but several other proofs might be given extending to the subsequent reigns

Sir F Palgrave is perhaps the first who has drawn attention to this scheme of local sanction by the people though I must think that he has somewhat obscured the subject by supposing the *mall* wherein the capitulary was confirmed to have been those of separate nations constituting the Frank empire instead of being determined by the territorial jurisdiction of each count He gives a natural interpretation to the famous words Lex consensu populi fit constitutione regis The capitulary was a constitution of the king though not without the advice of his great men the law was its confirmation by the nation collectively in the great placitum of the Field of March or by separate consent and subscription in each county

We are not however to be confident that this assent of the people in their county courts was virtually more than nominal A little consideration will show that it could not easily have been otherwise except in the strongest cases of unpopular legislation No Scabini or Rachimburgii in one county knew much of what passed at a distance and dissatisfaction must have been universal before it could have found its organ in such assemblies Before that time arrived rebellion was a more probable effect One capitulary of 823 does not even allude to consent In suis comitatibus coram nota fieri possit. But we cannot set this against the language of so many other capitularies which imply a formal ratification

Note XVII

The court of the palace possessed a considerable jurisdiction from the earliest times We have its judgments under the Merovingian kings Thus in a diploma of Clovis III A D 693 dated at Valenciennes— Cum ad universorum causas audiendas vel recta judicia terminanda resideremus (Rec des Hist iv 672.) Under the house of Charlemagne it is fully described by Hincmar in the famous passage above mentioned It was not so much in form a court of appeal as one acting by the sovereign s authority to redress the oppression of the subject by inferior magistrates Mr Allen has well rejected the singular opinion of Meyer that an erroneous or corrupt judgment of the inferior court was not reversible by this royal tribunal though the judges might be punished for giving it (Inquiry into Royal Prerogative Appendix p 79) Though according to what is said by M Beugnot the appeal was not made in regular form we cannot doubt that where the case of injury by the inferior judge was made out justice would be done by annulling his sentence. The emperor or king often presided here or in his absence the count of the palace Bishops counts household officers and others constituted this court which is not to be confounded with that of the seneschal having only a local jurisdiction over the domains of the crown and which did not continue under the house of Capet (Beugnot Registres des Arrets vol i p 15 18, in Documens Inedits 1839)

This tribunal the court of the palace was not founded upon any feudal principle and when the right of territorial justice and the subordination of fiefs came to be thoroughly established it ought according to analogy to have been replaced by one wherein none but the great vassals of France should have sat Such however was not the case This is a remarkable anomaly and a proof that the spirit of monarchy was not wholly extinguished For weak as was the crown under the first Capets their court though composed of persons by no means the peers of all who were amenable to it gave several judgments af

non posse reparari" (Cod 1 55 4) But the defensors were also magistrates and preservers of order — Per omnes regiones in quibus fera et periculi sui nescia latronum fervet insania probatissimi quique et districtissimi defensores adsint disciplinæ et quotidianis actibus præsint qui non sinant crimina impunita coalescere removeant patrocinia quæ favorem reis et auxilium scelerosis impartiendo maturari scelera fecer unt.' (Id 1 55 6 See too Theod *ubi supra*)

It may naturally be doubted whether the principles of freedom and justice which dictated these municipal institutions of the empire were fully carried out in effect Perhaps it might be otherwise even in the best times—those of Trajan and the Antonines But in the decline of the empire we find a striking revolution in the condition of the decu rions Those evil days rendered necessary an immense pressure of taxa tion and the artificial scheme of imperial policy introduced by Diocle tian and perfected by Constantine had for its main object to drain the resources of the provinces for the imperial treasury The decurions were made liable to such heavy burdens their responsibility for local as well as public charges was so extensive (in every case their private estates being required to make up the deficiency in the general tax) that the barren honors of the office afforded no compensation and many endeavored to shun them This responsibility indeed of the decurions and their obligation to remain in the city of the domicile as well as their frequent desire to escape from the burdens of their lot is manifest even in the Digest that is in the beginning of the third century (when the opinions of the lawyers therein collected were given) while the empire was yet unscathed but the evil became more flagrant in subsequent times The laws of the fourth and fifth centuries in the Theodosian code perpetually compel the decurions under severe pen alties to remain at home and undergo their onerous duties These laws are 192 in number filling the first title of the twelfth book of that code Guizot indeed Savigny and even Raynouard (though his bias is always to magnify municipal institutions) have drawn from this source such a picture of the condition of the decurions in the last two centuries of the western empire tl at we are almost at a loss to reconcile this absolute impoverishment of their order with other facts which apparently bear witness to a better state of society For greatly fallen as the decurions of the provincial cities must be deemed in comparison with their earlier cond tion there was still at the beginning of the fifth century especially in Ga il a liberal class of good family and not of ruined fortunes dwel ling mostly in cities or sometimes in villas or country houses not re mote from cities from whom the church was replenished and who kept up the politeness and luxury of the empire [b] The senators or senatorial famil es are often mentioned and by the latter term we perceive that an hereditary nobility whatever m ght be the case with some of the bar barian nations subsisted in public estimation if not in privilege among their Roman subjects The word senate appears to be sometimes used for the curia at large [c] but when we find *senatorius ordo* or *senatorium genus* we may refer it to the higher class who had served municipal offices or had become privileged by imperial favor and to whom the

[b] The letters of S donius Apoll naris bear abundant test mony to th s even for h s age, wh ch was after the m ddle of the century and the state of Gaul must have been much better before Salvian too in h s declamat on aga nst the v ces of the provinc als g ves us to understand that they were the v ces of wea th

[c] This was rather by analogy than n strictness thus Sum *si s c d ci oportet* curiæ senatorem (L b. 12 tit 1 lex 85) But perhaps the language n d fferent parts of the emp re or n d f ferent per ods m ght not be the same The law just cited is of Arcad us But Major an says n the next age and in the West of the curiales Quorum cœtum recte appellav t ant qu tas min orem senatum (Gothofred in leg 85 suprà citat) Some modern wr ters too must confound all who are denomi nated senators with the curiales.

officer deputed by the count (De Marca, Marca Hispanica, p 1038) Another grant occurs in the same volume (p 999), from the bishop of Barcelona in favor of a town of his diocese By some inattention Robertson has quoted these charters as granted to "two villages in the county of Roussillon" (Hist Charles V, note 16) The charters of Tortosa and Lerida in 1149 do not contain any grant of jurisdiction (p 1303)

The corporate towns in France and England always enjoyed fuller privileges than these Catalonian charters impart The essential characteristics of a commune, according to M Bréquigny, were an association confirmed by charter, a code of fixed sanctioned customs, and a set of privileges, always including municipal or elective government (Ordonnances, p 3) A distinction ought, however, to be pointed out, which is rather liable to elude observation between communes, or corporate towns, and boroughs (bourgeoisies) The main difference was that in the latter there was no elective government, the magistrates being appointed by the king or other superior In the possession of fixed privileges and exemptions, in the personal liberty of their inhabitants, and in the certainty of their legal usages there was no distinction between corporate towns and mere boroughs and indeed it is agreed that every corporate town was a borough, though every borough was not a corporation *f* The French antiquary quoted above does not trace these inferior communities or boroughs higher than the charters of Louis VI But we find the name and a good deal of the substance, in England under William the Conqueror, as is manifest from Domesday-Book

It is evident that if extensive privileges of internal government had been preserved in the north of France, there could have been no need for that great movement towards the close of the eleventh century, which ended in establishing civic freedom, much less could the contemporary historians have spoken of this as a new era in the state of France The bishops were now almost sovereign in their cities, the episcopal the municipal the feudal titles, conspired to enhance their power, and from being the protectors of the people, from the glorious office of *defensores civitatis*, they had in many places at least, become odious by their own exactions Hence the citizens of Cambray first revolted against their bishop in 957, and, after several ineffectual risings ultimately constituted themselves into a community in 1076. The citizens of Mans about the latter time had the courage to resist William Duke of Normandy, but this generous attempt at freedom was premature The cities of Noyon Beauvais and St Quentin, about the beginning of the next century were successful in obtaining charters of immunity and self-government from their bishops, and where these were violated on one side or the other, the king, Louis VI, came in to redress the injured party or to compose the dissensions of both Hence arose the royal charters of the Picard cities which soon extended to other parts of France, and were used as examples by the vassals of the crown This subject and especially the struggles of the cities against the bishops before the legal establishment of communities by charter, is abundantly discussed by M Thierry, in his Lettres sur l'Histoire de France But even where charters are extant they do not always create an incorporated community but as at Laon recognize and regulate an internal society already established (Guizot Civilisation en France Leçon 47)

We must here distinguish the cities of Flanders and Holland which obtained their independence much earlier, in fact their self govern

f The preface to the twelfth volume of Ordonnances des Rois contains a full account of *bourgeoisies* as that to the eleventh does of *communes* A great part of it, however, is applicable to both species, or rather to the genus and the species. See too that to the fourteenth volume of Recueil des Historiens, p 74

abundantly in the twelfth century, with a provost and *scabini* of their own. And to this body the kings in that age conceded certain rights over the inhabitants. The arms borne by the city, a ship, are those of the college of *nauta*. The subsequent process by which this corporation slid into a municipality is not clearly developed by the writer to whom I must refer.

Thus there were several sources of the municipal institutions in France, first the Roman system of decurions handed down prescriptively in some cities, but chiefly in the south; secondly, the German system of voluntary societies or guilds spreading to the whole community for a common end; thirdly, the forcible insurrection of the inhabitants against their lords or prelates, and lastly, the charters regularly granted by the king or by their immediate superior. Few are likely now to maintain the old theory of Robertson, that the kings of France encouraged the communities in order to make head with their help against the nobility, which a closer attention to history refutes. We must here, however, distinguish the corporate towns or communities from the other class called burgages, *bourgeoisies*. The chatelains encouraged the growth of villages around their castles, from whom they often derived assistance in war, and conceded to these burgesses some privileges, though not any municipal independence.

Guizot observes, as a difference between the curial system of the empire and that of the French communes in the twelfth century, that the former was aristocratic in its spirit; the decurions filled up vacancies in their body, and ultimately their privileges became hereditary. But the latter were grounded on popular election, though with certain modifications as to eligibility. Yet some of the aristocratic elements continued among the communes of the south. (Leçon 48.)

It is to be confessed that while the kings, from the end of the thirteenth century, altered so much their former policy as to restrain in great measure, and even in some instances to overthrow, the liberties of French cities, there was too much pretext for this in their lawless spirit and proneness to injustice. The better class, dreading the populace, gave aid to the royal authority by admitting bailiffs and provosts of the crown to exercise jurisdiction within their walls. But by this the privileges of the city were gradually subverted. (Guizot, Leçon 49. Thierry, Lettre xiv.) The ancient registers of the parliament of Paris, called Olim, prove this continual interference of the crown to establish peace and order in towns, and to check their encroachments on the rights of others. Nulle part, says M. Beugnot, on ne voit aussi bien que les communes etaient un instrument puissant pour opérer dans l'etat de grands et d'heureux changemens, mais non une institution qui eut en elle meme des conditions de durée.' (Registres des Arrets, vol. i. p. 192, in Documens Inédits, 1839.)

A more favorable period for civic liberty commenced, and possibly terminated, with the most tyrannical of French kings, Louis XI. Though the spirit of rebellion which actuated a large part of the nobles in his reign was not strictly feudal, but sprung much more from the combination of a few princes, it equally put the crown in jeopardy, and required all his sagacity to withstand its encroachments. He encouraged therefore, with a policy unusual in the house of Valois, the Tiers Etat, the middle orders, as a counterpoise. What has erroneously been said of Louis VI. is true of his subtle descendant. His ordinances, it is remarked by Sismondi (xiv. 314), are distinguished by liberal views in government. He not only gave the citizens in several places the choice of their magistrates, but established an urban militia, training the inhabitants to the use of arms, and placing in their hands the appointment of officers. And thus, at the close of our mediæval period, we leave the municipal authority of France in no slight vigor. It may

BOOK III.

THE HISTORY OF ITALY.

vento, which had stood against the arms of Charlemagne, and comprised more than half the present kingdom of Naples, had now fallen into decay, and was straitened by the Greeks in Apulia, and by the principalities of Capua and Salerno, which had been severed from its own territory, on the opposite coast [b] Though princes of the Carlovingian line continued to reign in France, their character was too little distinguished to challenge the obedience of Italy, already separated by family partitions from the Transalpine nations; and the only contest was among her native chiefs One of these, Berenger, originally Marquis of Friuli, or the March of Treviso, reigned for thirty-six years, but with continually disputed pretensions; and after his death the calamities of Italy were sometimes aggravated

ments In Italian they are freely translated by Muratori himself abridged no doubt, and without most of the original instruments, but well furnished with quotations, and abundantly sufficient for most purposes. They form three volumes in quarto I have in general quoted only the number of the dissertation on account of the variance between the Latin and Italian works in cases where the page is referred to, I have indicated by the title which of the two I intend to vouch 3 St Marc, a learned and laborious Frenchman has written a chronological abridgment of Italian history somewhat in the manner of Hénault, but so strangely divided by several parallel columns in every page that I could hardly name a book more inconvenient to the reader His knowledge like Muratori's lay a good deal in points of minute inquiry, and he is chiefly to be valued in ecclesiastical history The work descends only to the thirteenth century 4. Denina's Rivoluzioni d Italia originally published in 1769 is a perspicuous and lively book in which the principal circumstances are well selected It is not perhaps free from errors in fact and still less from those of opinion but till lately I do not know from what source a general acquaintance with the history of Italy could have been so easily derived 5 The publication of M Sismondi's Histoire des Républiques Italiennes has thrown a blaze of light around the most interesting at least in many respects of European countries during the middle ages I am happy to bear witness so far as my own studies have enabled me to the learning and diligence of this writer qualities which the world is sometimes apt not to suppose where they perceive so much eloquence and philosophy I cannot express my opinion of M Sismondi in this respect more strongly than by saying that his work has almost superseded the Annals of Muratori I mean from the twelfth century before which period his labor hardly begins Though doubtless not more accurate than Muratori he has consulted a much more extensive list of authors, and, considered as a register of facts alone his history is incomparably more useful These are combined in so skilful a manner as to diminish in a great degree that inevitable confusion which arises from frequency of transition and want of general unity It is much to be regretted that, from too redundant details of unnecessary circumstances, and sometimes if I may take the liberty of saying so, from unnecessary reflections, M Sismondi has run into a prolixity which will probably intimidate the languid students of our age It is the more to be regretted because the History of Italian Republics is calculated to produce a good far more important than storing the memory with historical facts that of communicating to the reader's bosom some sparks of the dignified philosophy the love for truth and virtue which lives along its eloquent pages. 6. To Muratori's collection of original writers the Scriptores Rerum Italicarum in twenty four volumes in folio I have paid considerable attention, perhaps there is no volume of it which I have not more or less consulted. But after the Annals of the same writer and the work of M Sismondi I have not thought myself bound to repeat a laborious search into all the authorities upon which those writers depend The utility for the most part of perusing original and contemporary authors consists less in ascertaining mere facts than in acquiring that insight into the spirit and temper of their times which it is utterly impracticable for any compiler to impart It would be impossible for me to distinguish what information I have derived from these higher sources in cases therefore where no particular authority is named, I would refer to the writings of Muratori and Sismondi especially the latter as the substratum of the following book

[b] Giannone Istoria Civile di Napoli l vii Sismondi Hist des Republiques Italiennes t. i p 244

governments than as absolute patrimonies, by separating districts from their jurisdiction, under inferior marquises and rural counts *h* The bishops were incapable of becoming competitors, and generally attached to the German party. The cities already possessed material influence, but were disunited by mutual jealousies. Since ancient prejudices, therefore, precluded a federate league of independent principalities and republics, for which perhaps the actual condition of Italy unfitted her, Eribert Archbishop of Milan, accompanied by some other chief men of Lombardy, repaired to Constance, and tendered the crown to Conrad, which he was already disposed to claim as a sort of dependency upon Germany. [A D 1024.] It does not appear that either Conrad or his successors were ever regularly elected to reign over Italy;*i* but whether this ceremony took place or not, we may certainly date from that time the subjection of Italy to the Germanic body. It became an unquestionable maxim, that the votes of a few German princes conferred a right to the sovereignty of a country which had never been conquered, and which had never formally recognized this superiority *j* But it was an equally fundamental rule, that the elected King of Germany could not assume the title of Roman Emperor until his coronation by the pope. The middle appellation of King of the Romans was invented as a sort of approximation to the imperial dignity. But it was not till the reign of Maximilian that the actual coronation at Rome was dispensed with, and the title of emperor taken immediately after the election

The period between Conrad of Franconia and Frederic Barbarossa, or from about the middle of the eleventh to that of the twelfth century, is marked by three great events in Italian history, the struggle between the empire and the papacy for ecclesiastical investitures, the establishment of the Norman

h Denina l ix c ii, Muratori, Antiquities Ital Dissert 8, Annali d Italia, A D 989

i Muratori, A.D 1026 It is said afterwards, p 367, that he was a Romanis ad Imperatorem electus The people of Rome therefore preserved their nominal right of concurring in the election of an emperor

Muratori in another place A D 1040 supposes that Henry III was chosen King of Italy, though he allows that no proof of it exists, and there seems no reason for the supposition

j Gunther, the poet of Frederic Barbarossa, expresses this not inelegantly·

Romani gloria regni
Nos penes est, quemcunque sibi Germania regem
Præficit, hunc dives submisso vertice Roma
Accipit, et verso Tiberim regit ordine [Rhenus
Gunther Ligurinus ap Struvium Corpus Hist. German p 266

Yet it appears from Otho of Frisingen, an unquestionable authority, that some Italian nobles concurred or at least were present and assisting, in the election of Frederic himself l ii c 1

kingdom in Naples, and the formation of distinct and nearly independent republics among the cities of Lombardy The first of these will find a more appropriate place in a subsequent chapter, where I shall trace the progress of ecclesiastical power But it produced a long and almost incessant state of disturbance in Italy, and should be mentioned at present as one of the main causes which excited in that country a systematic opposition to the imperial authority

The southern provinces of Italy, in the beginning of the eleventh century, were chiefly subject to the Greek empire, which had latterly recovered part of its losses, and exhibited some ambition and enterprise, though without any intrinsic vigor They were governed by a lieutenant, styled Catapan,[k] who resided at Bari in Apulia On the Mediterranean coast three duchies, or rather republics of Naples, Gaeta, and Amalfi, had for several ages preserved their connection with the Greek empire, and acknowledged its nominal sovereignty The Lombard principalities of Benevento, Salerno, and Capua had much declined from their ancient splendor The Greeks were, however, not likely to attempt any further conquests the court of Constantinople had relapsed into its usual indolence; nor had they much right to boast of successes rather due to the Saracen auxiliaries whom they hired from Sicily No momentous revolution apparently threatened the south of Italy, and least of all could it be anticipated from what quarter the storm was about to gather

The followers of Rollo, who rested from plunder and piracy in the quiet possession of Normandy, became devout professors of the Christian faith, and particularly addicted to the custom of pilgrimage, which gratified their curiosity and spirit of adventure In small bodies, well armed on account of the lawless character of the countries through which they passed the Norman pilgrims visited the shrines of Italy and even the Holy Land Some of these, very early in the eleventh century were engaged by a Lombard prince of Salerno against the Saracens, who had invaded his territory, and through that superiority of valor, and perhaps of corporal strength, which this singular people seem to have possessed above all other Europeans, they made surprising havoc among the enemy[l] This exploit led

[k] Catapanus, from κατα πασι one employed in general administration of affairs.

[l] Giannone t ii p. 7 [ed 4. 1753] I should observe that St Marc a more critical writer in examination of facts

to fresh engagements, and these engagements drew new adventurers from Normandy; they founded the little city of Aversa, near Capua, and were employed by the Greeks against the Saracens of Sicily. But, though performing splendid services in this war, they were ill repaid by their ungrateful employers; and being by no means of a temper to bear with injury, they revenged themselves by a sudden invasion of Apulia. [A D 1042.] This province was speedily subdued, and divided among twelve Norman counts; but soon afterwards Robert Guiscard, one of twelve brothers, many of whom were renowned in these Italian wars, acquired the sovereignty; and, adding Calabria to his conquests, put an end to the long dominion of the Eastern emperors in Italy.[m] [A D 1057.] He reduced the principalities of Salerno and Benevento, in the latter instance sharing the spoil with the pope, who took the city to himself, while Robert retained the territory. His conquests in Greece, which he invaded with the magnificent design of overthrowing the Eastern empire, were at least equally splendid, though less durable [A D. 1061.] Roger, his younger brother, undertook meanwhile the romantic enterprise, as it appeared, of conquering the island of Sicily with a small body of Norman volunteers But the Saracens were broken into petty states, and discouraged by the bad success of their brethren in Spain and Sardinia After many years of war Roger became sole master of Sicily, and took the title of Count. The son of this prince, upon the extinction of Robert Guiscard's posterity, united the two Norman sovereignties, and, subjugating the free republics of Naples and Amalfi, and the principality of Capua, established a boundary which has hardly been changed since his time[n] [A D. 1127.]

The first successes of these Norman leaders were viewed unfavorably by the popes Leo IX marched in person against Robert Guiscard with an army of German mercenaries, but was beaten and made prisoner in this unwise enterprise, the scandal of which nothing but good fortune could have light-

than Giannone, treats this first adventure of the Normans as unauthenticated. *Abregé Chronologique*, p 990

[m] The final blow was given to the Greek domination over Italy by the capture of Bari in 1071 after a siege of four years It had for some time been confined to this single city Muratori, St Marc,

[n] M Sismondi has excelled himself in describing the conquest of Amalfi and Naples by *Roger Guiscard* (t 1 c 4) warming his imagination with visions of liberty and virtue in those obscure republics which no real history survives to dispel

ened He fell, however, into the hands of a devout people, who implored his absolution for the crime of defending themselves, and, whether through gratitude, or as the price of his liberation, invested them with their recent conquests in Apulia, as fiefs of the Holy See This investiture was repeated and enlarged as the popes, especially in their contention with Henry IV and Henry V, found the advantage of using the Normans as faithful auxiliaries Finally, Innocent II, in 1139 conferred upon Roger the title of King of Sicily It is difficult to understand by what pretence these countries could be claimed by the see of Rome in sovereignty, unless by virtue of the pretended donation of Constantine, or that of Louis the Debonair, which is hardly less suspicious,[o] and least of all how Innocent II could surrender the liberties of the city of Naples, whether that was considered as an independent republic or as a portion of the Greek empire But the Normans, who had no title but their swords, were naturally glad to give an appearance of legitimacy to their conquest, and the kingdom of Naples, even in the hands of the most powerful princes in Europe, never ceased to pay a feudal acknowledgment to the chair of St Peter

The revolutions which time brought forth on the opposite side of Italy were still more interesting Under the Lombard and French princes every city with its adjacent district was subject to the government and jurisdiction of a count, who was himself subordinate to the duke or marquis of the province From these counties it was the practice of the first German emperors to dismember particular towns or tracts of country, granting them upon a feudal tenure to rural lords, by many of whom also the same title was assumed Thus by degrees the authority of the original officers was confined almost to the walls of their own cities and in many cases the bishops obtained a grant of the temporal government and exercised the functions which had belonged to the count[p]

It is impossible to ascertain the time at which the cities of Lombardy began to assume a republican form of government, or to trace with precision the gradations of their progress The last historian of Italy asserts that Otho the First erected

[o] Muratori presumes to suppose that the interpolated if not spurious grants of Louis the Debonair, Otho I and Henry II to the see of Rome were promulgated about the time of the first concessions to the Normans in order to give the popes a colorable pretext to dispose of the southern provinces of Italy A D 1059.

[p] Muratori, Antiquit Italiæ Dissert. 8, Annali d'Italia A D 989 Antichità Estensi p 76.

them into municipal communities, and permitted the election of their magistrates; but of this he produces no evidence; and Muratori, from whose authority it is rash to depart without strong reasons, is not only silent about any charters, but discovers no express unequivocal testimonies of a popular government for the whole eleventh century[q] The first appearance of the citizens acting for themselves is in a tumult at Milan in 991, when the archbishop was expelled from the city.[r] But this was a transitory ebullition, and we must descend lower for more specific proofs It is possible that the disputed succession of Ardoin and Henry, at the beginning of the eleventh age, and the kind of interregnum which then took place, gave the inhabitants an opportunity of choosing magistrates and of sharing in public deliberations. A similar relaxation indeed of government in France had exposed the people to greater servitude, and established a feudal aristocracy. But the feudal tenures seem not to have produced in Italy that systematic and regular subordination which existed in France during the same period; nor were the mutual duties of the relation between lord and vassal so well understood or observed Hence we find not only disputes, but actual civil war, between the lesser gentry or vavassors, and the higher nobility, their immediate superiors These differences were adjusted by Conrad the Salic, who published a remarkable edict in 1037, by which the feudal law of Italy was reduced to more certainty[s] From this disunion among the members of the feudal confederacy, it was more easy for the citizens to render themselves secure against its dominion The cities too of Lombardy were far more populous and better defended than those of France; they had learned to stand sieges in the Hungarian invasions of the tenth century, and had acquired the right of protecting themselves by strong fortifications Those which had been placed under the temporal government of their bishops had peculiar advantages in struggling for emancipation[t] This circum-

q Sismondi, t i p 97, 384, Muratori Dissert 49

r Muratori, Annali d Italia.

s Muratori, Annali d Italia, St Marc.

t The bishops seem to have become counts, or temporal governors of their sees, about the end of the tenth or before the middle of the eleventh century Muratori Diss 8, Denina, l ix c ii St Marc, a d 1041, 1047, tom In Arnulf's History of Milan, written before the close of the latter age, we have a contemporary evidence And from the perusal of that work I should infer that the archbishop was, in the middle of the eleventh century the chief magistrate of the city But, at the same time, it appears highly probable that an assembly of the citizens, or at least a part of the citizens partook in the administration of public affairs. Muratori, Scriptores Rerum Italicarum, t iv p 16, 22, 23, and particularly the last In most cities to the eastward of the Tesino, the bish-

Pisa, we read, under the years 1002 and 1004, of victories gained by the Pisans over the people of Lucca; in 1006, that the Pisans and Genoese conquered Sardinia.[v] These annals, indeed, are not by a contemporary writer, nor perhaps of much authority. But we have an original account of a war that broke out in 1057, between Pavia and Milan, in which the citizens are said to have raised armies, made alliances, hired foreign troops, and in every respect acted like independent states.[w] There was, in fact, no power left in the empire to control them. The two Henrys IV. and V. were so much embarrassed during the quarrel concerning investitures, and the continual troubles of Germany, that they were less likely to interfere with the rising freedom of the Italian cities, than to purchase their assistance by large concessions. Henry IV. granted a charter to Pisa in 1081, full of the most important privileges, promising even not to name any marquis of Tuscany without the people's consent;[x] and it is possible that, although the instruments have perished, other places might obtain similar advantages. However this may be, it is certain that before the death of Henry V., in 1125, almost all the cities of Lombardy, and many among those of Tuscany, were accustomed to elect their own magistrates, and to act as independent communities in waging war and in domestic government.[y]

The territory subjected originally to the count or bishop of these cities, had been reduced, as I mentioned above, by numerous concessions to the rural nobility. But the new republics, deeming themselves entitled to all which their former governors had once possessed, began to attack their nearest neighbors, and to recover the sovereignty of all their ancient territory. They besieged the castles of the rural counts, and successively reduced them into subjection. They suppressed some minor communities, which had been formed in imitation of themselves by little towns belonging to their district. Sometimes they purchased feudal superiorities or territorial jurisdictions, and, according to a policy not unusual

v Murat. *Diss.* 45. *Arnulfus*, the historian of Milan, makes no mention of any temporal counts, which seems to be a proof that there were none in any authority. He speaks always of Mediolanenses, Papienses, Ravenates &c. This history was written about 1085, but relates to the earlier part of that century. That of Landulphus corroborates this supposition, which, indeed, is capable of proof as to Milan and several other cities in which the temporal government had been legally vested in the bishops.

w Ibid.; Arnulf. Hist. Mediolan. p. 22.

x Murat. Dissert. 45.

y Murat. Annali d'Ital. A.D. 1107.

with the stronger party, converted the rights of property into those of government.[a] Hence, at the middle of the twelfth century, we are assured by a contemporary writer that hardly any nobleman could be found, except the Marquis of Montferrat, who had not submitted to some city.[a] We may except, also, I should presume, the families of Este and Malaspina, as well as that of Savoy. Muratori produces many charters of mutual compact between the nobles and the neighboring cities, whereof one invariable article is that the former should reside within the walls a certain number of months in the year.[b] The rural nobility, thus deprived of the independence which had endeared their castles, imbibed a new ambition of directing the municipal government of the cities, which consequently, during this period of the republics fell chiefly into the hands of the superior families. It was the sagacious policy of the Lombards to invite settlers by throwing open to them the privileges of citizenship, and sometimes they even bestowed them by compulsion. Sometimes a city, imitating the wisdom of ancient Rome, granted these privileges to all the inhabitants of another.[c] Thus, the principal cities, and especially Milan, reached, before the middle of the twelfth century, a degree of population very far beyond that of the capitals of the great kingdoms. Within their strong walls and deep trenches and in the midst of their well peopled streets the industrious dwelt secure from the license of armed pillagers and the oppression of feudal tyrants. Artisans, whom the military landholders contemned, acquired and deserved the right of bearing arms for their own and the public defense.[d] Their occupations became liberal, because they were the foundation of their political franchises, the citizens were classed in companies according to their respective crafts, each of which had its tribune or standard bearer (gonfalonier) at whose command when any tumult arose or enemy threatened they rushed in arms to muster in the market place.

a Il dominio ut le delle città e de' vil laggi era talvol a diviso fra due o p u pa droni, oss a che s as egnassero a cias cuno d'essi quarti o d videssero i proventi della gabelle, ovvero che l uno s gnore gode se d una spez e della giu risdiz one e l altro d un altra. Den na l xii. c. 3. Th s produced a vast intricacy of t tles, wh ch was of course advantageous to those who wanted a pretext for robb ng their neighbors.

a Otho Fri ngens. L ii. c. 13.

b Murat. Diss. 49.

c Ib d.

d Otho Frisingensis ap. Murat. Scr Rer Ital t. vi. p. 708. Ut et am ad comprimendos vicinos materia non careant, nferioris ord nis juvenes vel quosl bet contemptib l um et am mechan carum art um op fices, quos cæteræ gentes ab honest oribus et l berioribus stud s tanquam pestem propellunt, ad m l æ cingulum vel d gn tatum gradus assumere non ded gnan ur. Ex quo factum est ut cæteris orb s civitatibus, d vitus et potent a præemineant

But, unhappily, we cannot extend the sympathy which institutions so full of liberty create to the national conduct of these little republics Their love of freedom was alloyed by that restless spirit, from which a democracy is seldom exempt, of tyrannizing over weaker neighbors They played over again the tragedy of ancient Greece, with all its circumstances of inveterate hatred, unjust ambition, and atrocious retaliation, though with less consummate actors upon the scene Among all the Lombard cities, Milan was the most conspicuous, as well for power and population as for the abuse of those resources by arbitrary and ambitious conduct Thus, in 1111, they razed the town of Lodi to the ground, distributing the inhabitants among six villages and subjecting them to an unrelenting despotism[e] Thus, in 1118, they commenced a war of ten years' duration with the little city of Como, but the surprising perseverance of its inhabitants procured for them better terms of capitulation, though they lost their original independence The Cremonese treated so harshly the town of Crema that it revolted from them and put itself under the protection of Milan Cities of more equal forces carried on interminable hostilities by wasting each other's territory, destroying the harvests and burning the villages

The sovereignty of the emperors, meanwhile, though not very effective was in theory always admitted Their name was used in public acts, and appeared upon the coin When they came into Italy they had certain customary supplies of provisions, called fodrum regale, at the expense of the city where they resided, during their presence all inferior magistracies were suspended, and the rights of jurisdiction devolved upon them alone But such was the jealousy of the Lombards, that they built the royal palaces outside their gates, a precaution to which the emperors were compelled to submit This was at a very early time a subject of contention between the inhabitants of Pavia and Conrad II whose palace, seated in the heart of the city they had demolished in a sedition, and were unwilling to rebuild in that situation[f]

[e] The animosity between Milan and Lodi was of very old standing It originated according to Arnulf in the resistance made by the inhabitants of the latter city to an attempt made by Archbishop Eribert to force a bishop of his own nomination upon them The bloodshed plunder and conflagrations which had ensued would he says fill a volume if they were related at length Scriptores Rerum Italic. t. iv p 16. And this is the testimony of a writer who did not live beyond 1085. Seventy years more either of hostility or servitude elapsed before Lodi was permitted to respire.

[f] Otho Frisingens. p 710 Muratori A.D 1037

Such was the condition of Italy when Frederic Barbarossa, Duke of Suabia, and nephew of the last emperor, Conrad III, ascended the throne of Germany [1152] His accession forms the commencement of a new period, the duration of which is about one hundred years, and which is terminated by the death of Conrad IV, the last emperor of the house of Suabia It is characterized, like the former, by three distinguishing features in Italian history, the victorious struggle of the Lombard and other cities for independence, the final establishment of a temporal sovereignty over the middle provinces by the popes, and the union of the kingdom of Naples to the dominions of the house of Suabia

In Frederic Barbarossa the Italians found a very different sovereign from the two last emperors, Lothaire and Conrad III, who had seldom appeared in Italy, and with forces quite inadequate to control such insubordinate subjects The distinguished valor and ability of this prince rendered a severe and arbitrary temper and a haughty conceit of his imperial rights more formidable He believed, or professed to believe, the magnificent absurdity, that, as successor of Augustus, he inherited the kingdoms of the world In the same right, he more powerfully, if not more rationally, laid claim to the entire prerogatives of the Roman emperors over their own subjects, and in this the professors of the civil law, which was now diligently studied, lent him their aid with the utmost servility To such a disposition the self government of the Lombard cities appeared mere rebellion Milan especially, the most renowned of them all, drew down upon herself his inveterate resentment He found, unfortunately, too good a pretense in her behavior towards Lodi Two natives of that ruined city threw themselves at the emperor's feet, imploring him, as the ultimate source of justice, to redress the wrongs of their country It is a striking proof of the terror inspired by Milan that the consuls of Lodi disavowed the complaints of their countrymen, and the inhabitants trembled at the danger of provoking a summary vengeance against which the imperial arms seemed no protection[g] The Milanese, however, abstained from attacking the people of Lodi though they treated with contempt

[g] See an interesting account of these circumstances in the narrative of Otho Morena, a citizen of Lodi, kept Rerum Italicarum Scriptores, vol. vi. p. 961. Muratori, who translates Morena for parts of his work, should have remembered the provocations of Lodi towards Frederic in the Milanese war. Ann. d'Italie, t. ix. p. 102.

imperial officers It was in vain that they prostrated themselves at the feet of Frederic He gave at the best only vague promises of redress, they were in his eyes rebels, his delegates had acted as faithful officers, whom, even if they had gone a little beyond his intentions he could not be expected to punish

But there still remained at the heart of Lombardy the strong principle of national liberty imperishable among the perishing armies of her patriots, inconsumable in the conflagration of her cities * Those whom private animosities had led to assist the German conqueror blushed at the degradation of their country and at the share they had taken in it A league was secretly formed in which Cremona one of the chief cities on the imperial side took a prominent part [A D 1167] Those beyond the Adige hitherto not much engaged in the disputes of central Lombardy had already formed a separate confederacy to secure themselves from encroachments which appeared the more unjust as they had never borne arms against the emperor Their first successes corresponded to the justice of their cause, Frederic was repulsed from the territory of Verona a fortunate augury for the rest of Lombardy [A D 1164] These two clusters of cities on the east and west of the Adige now united themselves into the famous Lombard league the terms of which were settled in a general diet Their alliance was to last twenty years during which they pledged themselves to mutual assistance against anyone who should exact more from them than they had been used to perform from the time of Henry to the first coming of Frederic into Italy implying in this the recovery of their elective magistracies their rights of war and peace and those lucrative privileges which under the name of regalian had been wrested from them in the diet of Roncaglia †

This union of the Lombard cities was formed at a very favorable juncture Frederic had almost ever since his accession been engaged in open hostility with the see of Rome and was

*Quæ neque Dardanis campis potuere perire
Nec cum capta capi nec cum combusta cremari —Ennius.

† For the nature and conditions of the Lombard league besides the usual authorities see Muratori a 48th dissertation The words a tempore Henrici Regis usque ad intra umpera oris Frederici leave it ambiguous which of the Henrys was intended Muratori thinks it was Henry IV, because the cities then began to be independent It seems however natural when a king is mentioned without any numerical designation to interpret it of the last bearing that name as we say King William the Third And certainly the liberties of Lombardy were more perfect under Henry V than his father's besides which the one reign might be remembered and the other rested on tradition The question however is of little moment

pursuing the fruitless policy of Henry IV , who had endeavored to substitute an antipope of his own faction for the legitimate pontiff In the prosecution of this scheme he had besieged Rome with a great army, which, the citizens resisting longer than he expected, fell a prey to the autumnal pestilence which visits the neighborhood of that capital. The flower of German nobility was cut off by this calamity, and the emperor recrossed the Alps, entirely unable for the present to withstand the Lombard confederacy Their first overt act of insurrection was the rebuilding of Milan, the confederate troops all joined in this undertaking, and the Milanese, still numerous, though dispersed and persecuted, revived as a powerful republic Lodi was compelled to enter into the league Pavia alone continued on the imperial side As a check to Pavia, and to the Marquis of Montferrat, the most potent of the independent nobility, the Lombards planned the erection of a new city between the confines of these two enemies, in a rich plain to the south of the Po, and bestowed upon it, in compliment to the Pope, Alexander III , the name of Alessandria Though, from its hasty construction, Alessandria was even in that age deemed rude in appearance, it rapidly became a thriving and populous city.[1] The intrinsic energy and resources of Lombardy were now made manifest Frederic, who had triumphed by their disunion, was unequal to contend against their league After several years of indecisive war the emperor invaded the Milanese territory, but the confederates gave him battle, and gained a complete victory at Legnano [A D 1176] Frederic escaped alone and disguised from the field with little hope of raising a fresh army, though still reluctant from shame to acquiesce in the freedom of Lombardy He was at length persuaded, through the mediation of the republic of Venice, to consent to a truce of six years the provisional terms of which were all favorable to the league It was weakened, however, by the defection of some of its own members Cremona, which had never cordially united with her ancient enemies made separate conditions with Frederic and suffered herself to be named among the cities on the imperial side in the armistice Tortona and even Alessandria followed the same course during the six

[1] Alessandria was surnamed in derision della paglia, from the thatch with which the houses were covered Frederic was very desirous to change its name to Cæsarea as it is actually called in the peace of Constance being at that time on the imperial side But it soon recovered its former appellation.

horses of the stranger, and the blood of her children wasted in quarrels not their own. Conquering or conquered, in the indignant language of her poet, still alike a slave," a long retribution for the tyranny of Rome

Frederic did not attempt to molest the cities of Lombardy in the enjoyment of those privileges conceded by the treaty of Constance His ambition was diverted to a new scheme for aggrandizing the house of Suabia by the marriage of his eldest son Henry with Constance, the aunt and heiress of William II, King of Sicily That kingdom, which the first monarch Roger had elevated to a high pitch of renown and power, fell into decay through the misconduct of his son William, surnamed the Bad, and did not recover much of its lustre under the second William, though styled the Good His death without issue was apparently no remote event, and Constance was the sole legitimate survivor of the royal family It is a curious circumstance that no hereditary kingdom appears absolutely to have excluded females from its throne, except that which from its magnitude was of all the most secure from falling into the condition of a province The Sicilians felt too late the defect of their constitution, which permitted an independent people to be transferred, as the dowry of a woman, to a foreign prince, by whose ministers they might justly expect to be insulted and oppressed Henry, whose marriage with Constance took place in 1186, and who succeeded in her right to the throne of Sicily three years afterwards, was exasperated by a courageous but unsuccessful effort of the Norman barons to preserve the crown for an illegitimate branch of the royal family, and his reign is disgraced by a series of atrocious cruelties The power of the house of Suabia was now at its zenith on each side of the Alps, Henry received the imperial crown the year after his father's death in the third crusade, and even prevailed upon the princes of Germany to elect his infant son Frederic as his successor But his own premature decease clouded the prospects of his family Constance survived him but a year, and a child of four years old was left with the inheritance of a kingdom which his father's severity had rendered disaffected, and which the leaders of German mercenaries in his service desolated and disputed

During the minority of Frederic II, from 1198 to 1216 the

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* Per servir sempre o vincitrice o vinta.—Fulcaja.

was lawful sovereign of countries which had not long since been imperial fiefs, and the suzerainty over which had never been renounced. The original title of the Holy See, therefore, does not seem incontestable even as to this part of Matilda's donation. But I state with hesitation a difficulty to which the authors I have consulted do not advert *o* It is certain, however, that the emperors kept possession of the whole during the twelfth century, and treated both Spoleto and Ancona as parts of the empire, notwithstanding continual remonstrances from the Roman pontiffs. Frederic Barbarossa, at the negotiations of Venice in 1177, promised to restore the patrimony of Matilda in fifteen years; but at the close of that period Henry VI was not disposed to execute this arrangement, and granted the county in fief to some of his German followers Upon his death the circumstances were favorable to Innocent III. The infant King of Sicily had been intrusted by Constance to his guardianship A double election of Philip, brother of Henry VI., and of Otho Duke of Brunswick, engaged the princes of Germany, who had entirely overlooked the claims of young Frederic, in a doubtful civil war. Neither party was in a condition to enter Italy; and the imperial dignity was vacant for several years, till, the death of Philip removing one competitor, Otho IV., whom the pope had constantly favored, was crowned emperor. During this interval the Italians had no superior; and Innocent availed himself of it to maintain the pretensions of the see These he backed by the production of rather a questionable document, the will of Henry VI., said to have been found among the baggage of Marquard, one of the German soldiers who had been invested with fiefs by the late emperor The cities of what was later called the ecclesiastical state had in the twelfth century their own municipal government like those of Lombardy, but they were far less able to assert a complete independence They gladly, therefore, put themselves under the protection of the Holy See, which held out some prospect of securing them from Marquard and other rapacious partisans, without disturbing their internal regula-

o It is almost hopeless to look for explicit information upon the rights and pretensions of the Roman see in Italian writers even of the eighteenth century Muratori the most learned, and upon the whole, the fairest of them all, moves cautiously over this ground except when the claims of Rome happen to clash with those of the house of Este But I have not been able to satisfy myself by the perusal of some dry and tedious dissertations in St Marc (Abrége Chronologique de l Hist. de l Italie t. iv), who, with learning scarcely inferior to that of Muratori, possessed more opportunity and inclination to speak out

Emperor Otho IV., the Milanese and their allies were arranged on the imperial side; but the Tuscans continued to adhere to the pope.

In the wars of Frederic Barbarossa against Milan and its allies, we have seen the cities of Lombardy divided, and a considerable number of them firmly attached to the imperial interest. It does not appear, I believe, from history, though it is by no means improbable, that the citizens were at so early a time divided among themselves, as to their line of public policy, and that the adherence of a particular city to the emperor, or to the Lombard league, was only, as proved afterwards the case, that one faction or another acquired an ascendency in its councils. But jealousies long existing between the different classes, and only suspended by the national struggle which terminated at Constance, gave rise to new modifications of interests, and new relations towards the empire About the year 1200, or perhaps a little later, the two leading parties which divided the cities of Lombardy, and whose mutual animosity, having no general subject of contention, required the association of a name to direct as well as invigorate its prejudices, became distinguished by the celebrated appellations of Guelfs and Ghibelins; the former adhering to the papal side, the latter to that of the emperor. These names were derived from Germany, and had been the rallying word of faction for more than half a century in that country before they were transported to a still more favorable soil. The Guelfs took their name from a very illustrious family, several of whom had successively been dukes of Bavaria in the tenth and eleventh centuries. The heiress of the last of these intermarried with a younger son of the house of Este, a noble family settled near Padua, and possessed of great estates on each bank of the lower Po They gave birth to a second line of Guelfs, from whom the royal house of Brunswick is descended. The name of Ghibelin is derived from a village in Franconia, whence Conrad the Salic came, the progenitor, through females, of the Suabian emperors At the election of Lothaire in 1125, the Suabian family were disappointed of what they considered almost an hereditary possession; and at this time an hostility appears to have commenced between them and the house of Guelf, who were nearly related to Lothaire Henry the Proud, and his son Henry the Lion, representatives of the latter fam-

ily, were frequently persecuted by the Suabian emperors but their fortunes belong to the history of Germany [q] Meanwhile the elder branch though not reserved for such glorious destinies as the Guelfs continued to flourish in Italy the marquises of Este were by far the most powerful nobles in eastern Lombardy, and about the end of the twelfth century began to be considered as the heads of the church party in their neighborhood They were frequently chosen to the office of podesta or chief magistrate by the cities of Romagna and in 1208 the people of Ferrara set the fatal example of sacrificing their freedom for tranquility by electing Azzo VII Marquis of Este as their lord or sovereign [r]

Otho IV was son of Henry the Lion and consequently head of the Guelfs On his obtaining the imperial crown the prejudices of Italian factions were diverted out of their usual channel He was soon engaged in a quarrel with the pope whose hostility to the empire was certain into whatever hands it might fall In Milan however and generally in the cities which had belonged to the Lombard league against Frederic I hatred of the house of Suabia prevailed more than jealousy of the imperial prerogatives they adhered to names rather than to principles and supported a Guelf emperor even against the pope Terms of this description having no definite relation to principles which it might be troublesome to learn and defend are always acceptable to mankind and have the peculiar advantage of precluding altogether that spirit of compromise and accommodation by which it is sometimes endeavored to obstruct their tendency to hate and injure each other From this time every city and almost every citizen gloried in one of these barbarous denominations In several cities the imperial party predominated through hatred of their neighbors who espoused that of the church Thus the inveterate feuds between Pisa and Florence Modena and Bologna Cremona and Milan threw them into opposite factions But there was in every one of these a strong party against that which prevailed and consequently a Guelf city frequently became Ghibelin or conversely according to the fluctuations of the time [s]

[q] The German origin of these celebrated factions is clearly proved by a passage in Otho of Frisingen who lived half a century before we find the denomination transferred to Italy Struvius Corpus Hist. German. p 378, and Muratori AD 1152.

[r] Sismond t p 370.

[s] For the Guelf and Ghibelin factions besides the historians the 5 st d erratum of Muratori should be read. There is some degree of inaccuracy in his language where he speaks of these dissractions expiring at the beginning of the

The change to which we have adverted in the politics of the Guelf party lasted only during the reign of Otho IV. When the heir of the house of Suabia grew up to manhood, Innocent, who, though his guardian, had taken little care of his interests, as long as he flattered himself with the hope of finding a Guelf emperor obedient, placed the young Frederic at the head of an opposition, composed of cities always attached to his family, and of such as implicitly followed the see of Rome. He met with considerable success both in Italy and Germany, and after the death of Otho, received the imperial crown. But he had no longer to expect any assistance from the pope who conferred it Innocent was dead, and Honorius III., his successor, could not behold without apprehension the vast power of Frederic, supported in Lombardy by a faction which balanced that of the church, and menacing the ecclesiastical territories on the other side, by the possession of Naples and Sicily. This kingdom, feudatory to Rome, and long her firmest ally, was now, by a fatal connection which she had not been able to prevent, thrown into the scale of her most dangerous enemy. Hence the temporal dominion which Innocent III. had taken so much pains to establish became a very precarious possession, exposed on each side to the attacks of a power that had legitimate pretensions to almost every province composing it The life of Frederic II was wasted in an unceasing contention with the church, and with his Italian subjects, whom she excited to rebellions against him. Without inveighing, like the popish writers, against this prince, certainly an encourager of letters, and endowed with many eminent qualities, we may lay to his charge a good deal of dissimulation; I will not add ambition, because I am not aware of any period in the reign of Frederic, when he was not obliged to act on his defence against the aggression of others But if he had been a model of virtues, such

fifteenth century Quel secolo, e vero, abbondò anch' esso di *molte guerre, ma* nulla si operò sotto nome o pretesto delle fazioni suddette Solamente ritennero esse piede in alcune private famiglie Antichità Italiane t i p 148 But certainly the names of Guelf and Ghibelin, as party distinctions may be traced all through the fifteenth century The former faction showed itself distinctly in the insurrection of the cities subject to Milan upon the death of Gian Galeazzo Visconti in 1404 It appeared again in the attempt of the Milanese to reestablish their republic in 1447 Sismondi, t. ix. p 334 So in 1477, Ludovico Sforza made use of Ghibelin prejudices to exclude the regent Bonne of Savoy as a Guelf Sismondi, t xi p 79. In the ecclesiastical state the same distinctions appear to have been preserved still later Stefano Infessura in 1487, speaks familiarly of them Script Rer Ital t iii p 1221 And even in the conquest of Milan by Louis XII in 1500, the Guelfs of that city are represented as attached to the French party, while the Ghibelins abetted Ludovico Sforza and Maximilian Guicciardini, p 309 Other passages in the same historian show these factions to have been alive in various parts of Italy.

men as Honorius III, Gregory IX, and Innocent IV, the popes with whom he had successively to contend, would not have given him respite, while he remained master of Naples, as well as the empire[t]

It was the custom of every pope to urge princes into a crusade, which the condition of Palestine rendered indispensable, or, more properly, desperate But this great piece of supererogatory devotion had never yet been raised into an absolute duty of their station, nor had even private persons been ever required to take up the cross by compulsion Honorius III, however, exacted a vow from Frederic, before he conferred upon him the imperial crown, that he would undertake a crusade for the deliverance of Jerusalem Frederic submitted to this engagement, which perhaps he never designed to keep, and certainly endeavored afterwards to evade Though he became by marriage nominal King of Jerusalem,[u] his excellent understanding was not captivated with so barren a prospect, and at length his delays in the performance of his vow provoked Gregory IX to issue against him a sentence of excommunication Such a thunderbolt was not to be lightly regarded, and Frederic sailed, the next year, for Palestine But having disdained to solicit absolution for what he considered as no crime, the court of Rome was excited to still fiercer indignation against this profanation of a crusade by an excommunicated sovereign Upon his arrival in Palestine, he received intelligence that the papal troops had broken into the

[t] The rancor of bigoted Catholics against Frederic has hardly subsided at the present day A very moderate commendation of him in Tiraboschi vol iv p 7 was not suffered to pass uncontradicted by the Roman editor And though Muratori shows quite enough prejudice against that emperor's character a fierce Roman bigot whose animadversions are printed in the 17th volume of his Annals (8vo edition) flies into paroxysms of fury at every syllable that looks like moderation. It is well known that although the public policy of Rome has long displayed the pacific temper of weakness the thermometer of ecclesiastical sentiment in that city stands very nearly as high as in the thirteenth century [1810] (Giannone who suffered for his boldness has drawn Frederic II very favorably perhaps too favorably, in the 16th and 17th books of the Istoria Civile di Napoli

[u] The second wife of Frederic was Iolante or Violante daughter of John count of Brienne by Maria eldest daughter and heiress of Isabella wife of Conrad marquis of Montferrat This Isabella was the youngest daughter of Almaric or Amaury king of Jerusalem and by the deaths of her brother Baldwin IV of her eldest sister Sibilla wife of Guy de Lusignan and that sister's child Baldwin V succeeded to a claim upon Jerusalem which since the victories of Saladin was not very profitable It is said that the kings of Naples deduce their title to that sounding inheritance from this marriage of Frederic (Giannone l xvi c. 2) but the extinction of Frederic's posterity must have strictly speaking put an end to any right derived from him and Giannone himself indicates a better title by the cession of Maria a princess of Antioch and legitimate heiress of Jerusalem to Charles of Anjou in 1272 How far indeed this may have been regularly transmitted to the present King of Naples I do not know and am sure that it is not worth while to inquire

spirit It was in fact a party struggle of Guelf and Ghibelin cities, to which the names of the church and the empire gave more of dignity and consistence

The republics of Italy in the thirteenth century were so numerous and independent, and their revolutions so frequent, that it is a difficult matter to avoid confusion in following their history It will give more arrangement to our ideas, and at the same time illustrate the changes that took place in these little states, if we consider them as divided into four clusters or constellations, not indeed unconnected one with another, yet each having its own centre of motion and its own boundaries The first of these we may suppose formed of the cities in central Lombardy, between the Sessia and the Adige, the Alps and the Ligurian mountains, it comprehends Milan, Cremona, Pavia, Brescia, Bergamo, Parma, Piacenza, Mantua, Lodi, Alessandria, and several others less distinguished These were the original seats of Italian liberty, the great movers in the wars of the elder Frederic Milan was at the head of this cluster of cities, and her influence gave an ascendency to the Guelf party, she had since the treaty of Constance, rendered Lodi and Pavia almost her subjects, and was in strict union with Brescia and Piacenza Parma however, and Cremona, were unshaken defenders of the empire In the second class we may place the cities of the march of Verona, between the Adige and the frontiers of Germany Of these there were but four worth mentioning Verona, Vicenza Padua and Treviso The citizens of all the four were inclined to the Guelf interests; but a powerful body of rural nobility who had never been compelled, like those upon the Upper Po to quit their fortresses in the hilly country, or reside within the walls attached themselves to the opposite denomination [v] Some of them obtained very great authority in the civil feuds of these four republics, and especially two brothers Eccelin and Alberic da Romano, of a rich and distinguished family, known for its devotion to the empire By extraordinary vigor and decision of character, by dissimulation and breach of oaths, by the intimidating effects of almost unparalleled cruelty, Eccelin da Romano became after some years the absolute master of three cities, Padua, Verona and Vicenza, and the Guelf party, in consequence, was entirely subverted beyond the Adige during the continuance

[v] Sismond t. ii. p. 22.

imperial city, but over which Frederic could no longer retain his supremacy [A.D 1245] In this assembly, where one hundred and forty prelates appeared the question whether Frederic ought to be deposed was solemnly discussed, he submitted to defend himself by his advocates and the pope in the presence though without formally collecting the suffrages of the council pronounced a sentence by which Frederic's excommunication was renewed the empire and all his kingdoms taken away and his subjects absolved from their fidelity This is the most pompous act of usurpation in all the records of the church of Rome and the tacit approbation of a general council seemed to incorporate the pretended right of deposing kings which might have passed as a mad vaunt of Gregory VII and his successors with the established faith of Christendom

Upon the death of Frederic II in 1250 he left to his son Conrad a contest to maintain for every part of his inheritance as well as for the imperial crown But the vigor of the house of Suabia was gone Conrad was reduced to fight for the kingdom of Naples the only succession which he could hope to secure against the troops of Innocent IV who still pursued his family with implacable hatred and claimed that kingdom as forfeited to its feudal superior the Holy See After Conrad's premature death which happened in 1254 the throne was filled by his illegitimate brother Manfred who retained it by his

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The death of Conrad brings to a termination that period in Italian history which we have described as nearly coextensive with the greatness of the house of Suabia It is perhaps upon the whole the most honorable to Italy: that in which she displayed the most of national energy and patriotism A Florentine or Venetian may dwell with pleasure upon later times, but a Lombard will cast back his eye across the desert of centuries, till it reposes on the field of Legnano. Great changes followed in the foreign and internal policy, in the moral and military character of Italy But before we descend to the next period, it will be necessary to remark some material circumstances in that which has just passed under our review.

The successful resistance of the Lombard cities to such princes as both the Fredericks must astonish a reader who brings to the story of these middle ages notions derived from modern

criminal judge, and preserver of the peace. The last duty was frequently arduous, and required a vigorous as well as an upright magistrate Offences against the laws and security of the commonwealth were during the middle ages as often, perhaps more often, committed by the rich and powerful than by the inferior class of society Rude and licentious manners, family feuds and private revenge, or the mere insolence of strength, rendered the execution of criminal justice practically and in every day s experience, what is now little required, a necessary protection to the poor against oppression The sentence of a magistrate against a powerful offender was not pronounced without danger of tumult it was seldom executed without force A convicted criminal was not, as at present, the stricken deer of society, whose disgrace his kindred shrink from participating, and whose memory they strive to forget Imputing his sentence to iniquity, or glorying in an act which the laws of his fellow citizens, but not their sentiments condemned he stood upon his defence amidst a circle of friends The law was to be enforced not against an individual but a family—not against a family, but a faction—not perhaps against a local faction but the whole Guelf or Ghibelin name, which might become interested in the quarrel The podesta was to arm the republic against her refractory citizen, his house was to be besieged and razed to the ground, his defenders to be quelled by violence and thus the people become familiar with outrage and homicide under the command of their magistrates were more disposed to repeat such scenes at the instigation of their passions *

The podesta was sometimes chosen in a general assembly sometimes by a select number of citizens His office was annual though prolonged in peculiar emergencies He was invariably a man of noble family even in those cities which excluded their own nobility from any share in the government He received a fixed salary and was compelled to remain in the city after the expiration of his office for the purpose of answering such charges as might be adduced against his conduct He could neither marry a native of the city, nor have any relation resident within the district nor even so great was their jealousy eat or drink in the house of any citizen

* Sismondi [illegible] from whom the substance of these observations is borrowed. They may be corroborated by Villani s history of Florence and Stella s annals of Genoa.

[illegible]

were in perpetual fluctuation. The magistrates elected in almost all of them, when they first began to shake off the jurisdiction of their count or bishop, were styled consuls; a word very expressive to an Italian ear, since, in the darkest ages, tradition must have preserved some acquaintance with the republican government of Rome.[c] The consuls were always annual; and their office comprehended the command of the national militia in war, as well as the administration of justice and preservation of public order; but their number was various; two, four, six, or even twelve. In their legislative and deliberative councils the Lombards still copied the Roman constitution, or perhaps fell naturally into the form most calculated to unite sound discretion with the exercise of popular sovereignty. A council of trust and secrecy (della credenza) was composed of a small number of persons, who took the management of public affairs, and may be called the ministers of the state. But the decision upon matters of general importance, treaties of alliance or declarations of war, the choice of consuls or ambassadors, belonged to the general council. This appears not to have been uniformly constituted in every city; and according to its composition the government was more or less democratical. An ultimate sovereignty, however, was reserved to the mass of the people; and a parliament or general assembly was held to deliberate on any change in the form of constitution.[d]

About the end of the twelfth century a new and singular species of magistracy was introduced into the Lombard cities. During the tyranny of Frederic I. he had appointed officers of his own, called podestàs, instead of the elective consuls. It is remarkable that this memorial of despotic power should not have excited insuperable alarm and disgust in the free republics. But, on the contrary, they almost universally, after the peace of Constance, revived an office which had been abrogated when they first rose in rebellion against Frederic. From experience, as we must presume, of the partiality which their domestic factions carried into the administration of justice, it became a general practice to elect, by the name of podestà, a citizen of some neighboring state as their general, their

[c] Landulf, the younger, whose history of Milan extends from 1095 to 1137, calls himself publicorum officiorum participem et consulem epistolarum dictator. Rer. Ital. t. v. p. 465. This is, I believe, the earliest mention of those magistrates. Muratori, Annali d'Italia, A.D. 1100.

[d] Muratori Dissert. 46 and 52. Sismondi, t. i. p. 385.

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e Simond t p. 258 from whom the substance of these observations is borrowed. They may be copiously illustrated by Villani's history of Florence and Stella's annals of Genoa.

The authority of these foreign magistrates was not by any means alike in all cities In some he seems to have superseded the consuls, and commanded the armies in war In others, as Milan and Florence, his authority was merely judicial We find in some of the old annals the years headed by the names of the podestas, as by those of the consuls in the history of Rome [f]

The effects of the evil spirit of discord that had so fatally breathed upon the republics of Lombardy were by no means confined to national interests, or to the grand distinction of Guelf and Ghibelin Dissensions glowed in the heart of every city, and as the danger of foreign war became distant, these grew more fierce and unappeasable The feudal system had been established upon the principle of territorial aristocracy, it maintained the authority, it encouraged the pride of rank Hence, when the rural nobility were compelled to take up their residence in cities, they preserved the ascendency of birth and riches From the natural respect which is shown to these advantages, all offices of trust and command were shared amongst them, it is not material whether this were by positive right or continual usage A limited aristocracy of this description, where the inferior citizens possess the right of selecting their magistrates by free suffrage from a numerous body of nobles, is not among the worst forms of government, and affords no contemptible security against oppression and anarchy This regimen appears to have prevailed in most of the Lombard cities during the eleventh and twelfth centuries, though, in so great a deficiency of authentic materials, it would be too peremptory to assert this as an unequivocal truth There is one very early instance, in the year 1041, of a civil war at Milan between the capitanei, or vassals of the empire and the plebeian burgesses, which was appeased by the mediation of Henry III This is ascribed to the ill treatment which the latter experienced —as was usual indeed in all parts of Europe, but which was endured with inevitable submission everywhere else In this civil war, which lasted three years, the nobility were obliged to leave Milan, and carry on the contest in the adjacent plains, and one of their class by name Lanzon, whether moved by ambition, or by virtuous indignation against tyranny, put himself at the head of the people [g]

[f] Muratori Dissert 46.
[g] Landulfus Hist. Mediolan in Script. Rerum Ital. t iv p 86 Muratori Dissert 52, Annali d Italia A.D 1041 t Marc, t iii p 94.

From this time we scarcely find any mention of dissensions among the two orders till after the peace of Constance—a proof, however defective the contemporary annals may be, that such disturbances had neither been frequent nor serious A schism between the nobles and people is noticed to have occurred at Faenza in 1185 A serious civil war of some duration broke out between them at Brescia in 1200 From this time mutual jealousies interrupted the domestic tranquillity of other cities, but it is about 1220 that they appear to have taken a decided aspect of civil war, within a few years of that epoch the question of aristocratical or popular command was tried by arms in Milan, Piacenza, Modena Cremona, and Bologna *h*

It would be in vain to enter upon the merits of these feuds, which the meagre historians of the time are seldom much disposed to elucidate, and which they saw with their own prejudices A writer of the present age would show little philosophy if he were to heat his passions by the reflection, as it were, of those forgotten animosities, and aggravate, like a partial contemporary, the failings of one or another faction We have no need of positive testimony to acquaint us with the general tenor of their history We know that a nobility is always insolent that a populace is always intemperate, and may safely presume that the former began, as the latter ended, by injustice and abuse of power At one time the aristocracy, not content with seeing the annual magistrates selected from their body, would endeavor by usurpation to exclude the bulk of the citizens from suffrage At another, the merchants, grown proud by riches, and confident of their strength would aim at obtaining the honors of the state which had been reserved to the nobility This is the inevitable consequence of commercial wealth and indeed of freedom and social order, which are the parents of wealth There is in the progress of civilization a term at which exclusive privileges must be relaxed or the possessors must perish along with them In one or two cities a temporary compromise was made through the intervention of the pope whereby offices of public trust, from the highest to the lowest, were divided in equal proportions or otherwise between the nobles and the people This also is no bad expedient, and proved singularly efficacious in appeasing the dissensions of ancient Rome

h Sismondi, t. ii. p. 444 Muratori, Annali d Italia, A.D. 1185 &c.

There is, however, a natural preponderance in the popular scale, which, in a fair trial, invariably gains on that of the less numerous class The artisans, who composed the bulk of the population, were arranged in companies according to their occupations Sometimes, as at Milan, they formed separate associations, with rules for their internal government[1] The clubs, called at Milan la Motta and la Credenza, obtained a degree of weight not at all surprising to those who consider the spirit of mutual attachment which belongs to such fraternities, and we shall see a more striking instance of this hereafter in the republic of Florence To so formidable and organized a democracy the nobles opposed their numerous families the generous spirit that belongs to high birth, the influence of wealth and established name The members of each distinguished family appear to have lived in the same street, their houses were fortified with square massive towers of commanding height, and wore the semblance of castles within the walls of a city Brancaleon, the famous senator of Rome, destroyed one hundred and forty of these domestic entrenchments, which were constantly serving the purpose of civil broils and outrage Expelled, as frequently happened, from the city, it was in the power of the nobles to avail themselves of their superiority in the use of cavalry, and to lay waste the district till weariness of an unprofitable contention reduced the citizens to terms of compromise But when all these resources were ineffectual, they were tempted or forced to sacrifice the public liberty to their own welfare, and lent their aid to a foreign master or a domestic usurper

In all these scenes of turbulence whether the contest was between the nobles and people or the Guelf or Ghibelin factions no mercy was shown by the conquerors The vanquished lost their homes and fortunes and retiring to other cities of their own party waited for the opportunity of revenge In a popular tumult the houses of the beaten side were frequently levelled to the ground—not perhaps from a sort of senseless fury, which Muratori inveighs against, but on account of the injury which these fortified houses inflicted upon the lower citizens The most deadly hatred is that which men exasperated by proscription and forfeiture bear to their country, nor have we need to ask any other cause for the

[1] Muratori Dissert. 52 Sismond t. ii p. 262

calamities of Italy than the bitterness with which an unsuccessful faction was thus pursued into banishment When the Ghibelins were returning to Florence, after a defeat given to the prevailing party in 1260 it was proposed among them to demolish the city itself which had cast them out, and but for the persuasion of one man, Farinata degl Uberti their revenge would have thus extinguished all patriotism[1] It is to this that we must ascribe their proneness to call in assistance from every side, and to invite any servitude for the sake of retaliating upon their adversaries The simple love of public liberty is in general I fear, too abstract a passion to glow warmly in the human breast, and though often invigorated as well as determined by personal animosities and predilections is as frequently extinguished by the same cause

Independently of the two leading differences which embattled the citizens of an Italian state, their form of government and their relation to the empire there were others more contemptible though not less mischievous In every city the quarrels of private families became the foundation of general schism, sedition and proscription Sometimes these blended themselves with the grand distinctions of Guelf and Ghibelin, sometimes they were more nakedly conspicuous This may be illustrated by one or two prominent examples Imilda de Lambertazzi a noble young lady at Bologna was surprised by her brothers in a secret interview with Boniface Gieremei whose family had long been separated by the most inveterate enmity from her own She had just time to escape while the Lambertazzi despatched her lover with their poisoned daggers On her return she found his body still warm and a faint hope suggested the remedy of sucking the venom from his wounds But it only communicated itself to her own veins and they were found by her attendants stretched lifeless by each other's side So cruel an outrage wrought the Gieremei to madness they formed alliances with some neighboring republics the Lambertazzi took the same measures and after a fight in the streets of Bologna of forty days' duration, the latter were driven out of the city with all the Ghibelins their political associates Twelve thousand citizens were condemned to ban

[1] G Villani l vi c. 82 Sismond I cannot forgive Dante for placing this patriot trà l anime più nere in one of the worst regions of his Inferno The conversation of the poet with Farinata canto 10, is very fine and illustrative of Florentine history

ishment, their houses razed, and their estates confiscated [k] Florence was at rest till, in 1215, the assassination of an individual produced a mortal feud between the families Buondelmonti and Uberti, in which all the city took a part An outrage committed at Pistoja in 1300 split the inhabitants into the parties of Bianchi and Neri, and these, spreading to Florence, created one of the most virulent divisions which annoyed that republic In one of the changes which attended this little ramification of faction, Florence expelled a young citizen who had borne offices of magistracy, and espoused the cause of the Bianchi Dante Alighieri retired to the courts of some Ghibelin princes, where his sublime and inventive mind, in the gloom of exile, completed that original combination of vast and extravagant conceptions with keen political satire which has given immortality to his name, and even lustre to the petty contests of his time [l]

In the earlier stages of the Lombard republic their differences, as well mutual as domestic, had been frequently appeased by the mediation of the emperors, and the loss of this salutary influence may be considered as no slight evil attached to that absolute emancipation which Italy attained in the thirteenth century The popes sometimes endeavored to interpose an authority which, though not quite so direct was held in greater veneration, and if their own tempers had been always pure from the selfish and vindictive passions of those whom they influenced, might have produced more general and permanent good But they considered the Ghibelins as their own peculiar enemies and the triumph of the opposite faction as the church's best security Gregory X and Nicholas III, whether from benevolent motives, or because their jealousy of Charles of Anjou, while at the head of the Guelfs, suggested the revival of a Ghibelin party as a counterpoise to his power, distinguished their pontificate by enforcing measures of reconciliation in all Italian cities, but their successors returned to the ancient policy and prejudices of Rome

The singular history of an individual far less elevated in station than popes or emperors Fra Giovanni di Vicenza, belongs to these times and to this subject This Dominican friar

[k] Sismondi t i p 442 This story may suggest that of Romeo and Juliet itself founded upon an Italian novel and not an unnatural picture of manners.

[l] Dino Compagni in Scr Rer Ital t ix Villani Ist Florent l vii Dante passim.

began his career at Bologna in 1233, preaching the cessation of war and forgiveness of injuries He repaired from thence to Padua, to Verona, and the neighboring cities At his command men laid down their instruments of war, and embraced their enemies With that susceptibility of transient impulse natural to popular governments, several republics implored him to reform their laws and to settle their differences A general meeting was summoned in the plain of Paquara, upon the banks of the Adige The Lombards poured themselves forth from Romagna and the cities of the March, Guelfs and Ghibelins, nobles and burghers, free citizens and tenantry of feudal lords, marshalled around their carroccios, caught from the lips of the preacher the allusive promise of universal peace They submitted to agreements dictated by Fra Giovanni, which contain little else than a mutual amnesty, whether it were that their quarrels had been really without object, or that he had dexterously avoided to determine the real points of contention But power and reputation suddenly acquired are transitory Not satisfied with being the legislator and arbiter of Italian cities, he aimed at becoming their master, and abused the enthusiasm of Vicenza and Verona to obtain a grant of absolute sovereignty Changed from an apostle to an usurper the fate of Fra Giovanni might be predicted, and he speedily gave place to those who though they made a worse use of their power, had in the eyes of mankind, more natural pretensions to possess it [m]

[m] Tiraboschi Storia della Letteratura t. iv p 214 (a very well written account) Sismondi t iL p 484

PART II

State of Italy after the Extinction of the House of Suabia—Conquest of Naples by Charles of Anjou—The Lombard Republics become severally subject to Princes or Usurpers—The *Visconti* of Milan—Their Aggrandizement—Decline of the Imperial Authority over Italy—Internal State of Rome—Rienzi—Florence—Her Forms of Government historically traced to the End of the Fourteenth Century—Conquest of Pisa—Pisa—Its Commerce Naval Wars with Genoa and Decay—Genoa—Her Contentions with Venice—War of Chioggia—Government of Genoa—Venice—Her Origin and Prosperity—Venetian Government—Its Vices—Territorial Conquests of Venice—Military System of Italy—Companies of Adventure—1 Foreign Guarnieri Hawkwood—And 2 Native Braccio Sforza—Improvements in Military Service—Arms Offensive and Defensive—Invention of Gunpowder—Naples—First Line of Anjou—Joanna I—Ladislaus—Joanna II—Francis Sforza becomes Duke of Milan—Alfonso King of Naples—State of Italy during the Fifteenth Century—Florence—Rise of the Medici and Ruin of their Adversaries—Pretensions of Charles VIII to Naples

From the death of Frederic II in 1250 to the invasion of Charles VIII in 1494 a long and undistinguished period occurs, which it is impossible to break into any natural divisions It is an age in many respects highly brilliant the age of poetry and letters of art, and of continual improvement Italy displayed an intellectual superiority in this period over the Transalpine nations which certainly had not appeared since the destruction of the Roman empire But her political history presents a labyrinth of petty facts so obscure and of so little influence as not to arrest the attention so intricate and incapable of classification as to leave only confusion to the memory The general events that are worthy of notice and give a character to this long period are the establishment of small tyrannies upon the ruins of republican government in most of the cities the gradual rise of three considerable states Milan Florence and Venice and the naval and commercial rivalry between the last city and Genoa the final acquisition by the popes of their present territorial sovereignty and the

prince was soon involved in a protracted and unfortunate quarrel with the kings of Aragon, to whose protection his revolted subjects in Italy had recurred On the other hand, several men of energetic character retrieved the Ghibelin interests in Lombardy, and even in the Tuscan cities The Visconti were acknowledged heads of that faction A family early established as lords of Verona, the della Scala, maintained the credit of the same denomination between the Adige and the Adriatic. Castruccio Castrucani, an adventurer of remarkable ability, rendered himself prince of Lucca, and drew over a formidable accession to the imperial side from the heart of the church party in Tuscany, though his death restored the ancient order of things The inferior tyrants were partly Guelf, partly Ghibelin according to local revolutions, but upon the whole the latter acquired a gradual ascendency Those indeed who cared for the independence of Italy, or for their own power, had far less to fear from the phantom of imperial prerogatives, long intermitted and incapable of being enforced, than from the new race of foreign princes whom the church had substituted for the house of Suabia The Angevin kings of Naples were sovereigns of Provence, and from thence easily encroached upon Piedmont, and threatened the Milanese Robert, the third of this line, almost openly aspired, like his grandfather Charles I, to a real sovereignty over Italy His offers of assistance to Guelf cities in war were always coupled with a demand of the sovereignty Many yielded to his ambition, and even Florence twice bestowed upon him a temporary dictatorship In 1314 he was acknowledged lord of Lucca Florence, Pavia Alessandria Bergamo, and the cities of Romagna In 1318 the Guelfs of Genoa found no other resource against the Ghibelin emigrants who were under their walls than to resign their liberties to the King of Naples for the term of ten years which he procured to be renewed for six more. The Avignon popes especially John XXII, out of blind hatred to the Emperor Louis of Bavaria and the Visconti family, abetted all these measures of ambition But they were rendered abortive by Robert's death and the subsequent disturbances of his kingdom

At the latter end of the thirteenth century there were almost as many princes in the north of Italy as there had been free cities in the preceding age. Their equality, and the fre-

tonic electors without their concurrence. Even Florence, the most independent and high-spirited of republics, was induced to make a treaty with Charles IV. in 1355, which, while it confirmed all her actual liberties, not a little, by that very confirmation, affected her sovereignty.[g] This deference to the supposed prerogatives of the empire, even while they were least formidable, was partly owing to jealousy of French or Neapolitan interference, partly by the national hatred of the popes who had seceded to Avignon, and in some degree to a misplaced respect for antiquity, to which the revival of letters had given birth. The great civilians, and the much greater poets, of the fourteenth century, taught Italy to consider her emperor as a dormant sovereign, to whom her various principalities and republics were subordinate, and during whose absence alone they had legitimate authority.

In one part, however, of that country, the empire had, soon after the commencement of this period, spontaneously renounced its sovereignty. From the era of Pepin's donation, confirmed and extended by many subsequent charters, the Holy See had tolerably just pretensions to the province entitled Romagna, or the exarchate of Ravenna. But the popes, whose menaces were dreaded at the extremities of Europe, were still very weak as temporal princes. Even Innocent III. had never been able to obtain possession of this part of St. Peter's patrimony. The circumstances of Rodolph's accession inspired Nicholas III. with more confidence. That emperor granted a confirmation of everything included in the donations of Louis I., Otho, and his other predecessors; but was still reluctant or ashamed to renounce his imperial rights. Accordingly his charter is expressed to be granted without

g The republic of Florence was at this time in considerable peril from a coalition of the Tuscan cities against her, which rendered the protection of the emperor convenient. But it was very reluctantly that she acquiesced in even a nominal submission to his authority. The Florentine envoys, in their first address would only use the words, Santa Corona, or Serenissimo Principe, senza ricordarlo imperadore o dimostrargli alcuna reverenza di suggezzione domandando che il commune di Firenze volea essendogli ubbidiente le cotali e le cotali franchigie per mantenere il suo popolo nell' usata libertade. Matt. Villani, p. 274. (Script. Rer. Ital. t. xiv.) This style made Charles angry, and the city soon atoned for it by accepting his privilege. In this it must be owned, he assumes a decided tone of sovereignty. The gonfalonier and priors are declared to be his vicars. The deputies of the city did homage and swore obedience. Circumstances induced the principal citizens to make this submission, which they knew to be merely nominal. But the high-spirited people, not so indifferent about names, came into it very unwillingly. The treaty was seven times proposed and as often rejected in the consiglio del popolo, before their feelings were subdued. Its publication was received with no marks of joy. The public buildings alone were illuminated, but a sad silence indicated the wounded pride of every private citizen.—M. Villani, pp. 286, 290. Sismondi, t. vi. p. 238.

diminution of the empire (*sine demembratione imperii*); and his chancellor received an oath of fidelity from the cities of Romagna. But the pope insisting firmly on his own claim, Rodolph discreetly avoided involving himself in a fatal quarrel, and, in 1278, absolutely released the imperial supremacy over all the dominions already granted to the Holy See[h]

This is a leading epoch in the temporal monarchy of Rome But she stood only in the place of the emperor; and her ultimate sovereignty was compatible with the practicable independence of the free cities, or of the usurpers who had risen up among them. Bologna, Faenza, Rimini, and Ravenna, with many others less considerable, took an oath indeed to the pope, but continued to regulate both their internal concerns and foreign relations at their own discretion. The first of these cities was far preëminent above the rest for population and renown, and, though not without several intermissions, preserved a republican character till the end of the fourteenth century. The rest were soon enslaved by petty tyrants, more obscure than those of Lombardy. It was not easy for the pontiffs of Avignon to reinstate themselves in a dominion which they seemed to have abandoned; but they made several attempts to recover it, sometimes with spiritual arms, sometimes with the more efficacious aid of mercenary troops. The annals of this part of Italy are peculiarly uninteresting

Rome itself was, throughout the middle ages, very little disposed to acquiesce in the government of her bishop. His rights were indefinite, and unconfirmed by positive law; the emperor was long sovereign, the people always meant to be free. Besides the common causes of insubordination and anarchy among the Italians, which applied equally to the capital city, other sentiments more peculiar to Rome preserved a continual, though not uniform, influence for many centuries There still remained enough in the wreck of that vast inheritance to swell the bosoms of her citizens with a consciousness of their own dignity. They bore the venerable name, they contemplated the monuments of art and empire, and forgot, in the illusions of national pride, that the tutelar gods of the building were departed forever. About the middle of the twelfth century these recollections were heightened

[h] Muratori, ad ann 1274 1275, 1278; Sismondi, t. iii. p 461.

by the eloquence of Arnold of Brescia, a political heretic who preached against the temporal jurisdiction of the hierarchy In a temporary intoxication of fancy, they were led to make a ridiculous show of self importance towards Frederic Barbarossa, when he came to receive the imperial crown, but the German sternly chided their ostentation, and chastised their resistance[i] With the popes they could deal more securely Several of them were expelled from Rome during that age by the seditious citizens Lucius II died of hurts received in a tumult The government was vested in fifty six senators, annually chosen by the people, through the intervention of an electoral body, ten delegates from each of the thirteen districts of the city[j] This constitution lasted not quite fifty years In 1192 Rome imitated the prevailing fashion by the appointment of an annual foreign magistrate[k] Except in name, the senator of Rome appears to have perfectly resembled the podesta of other cities This magistrate superseded the representative senate, who had proved by no means adequate to control the most lawless aristocracy of Italy I shall not repeat the story of Brancaleon's rigorous and inflexible justice, which a great historian has already drawn from obscurity It illustrates not the annals of Rome alone, but the general state of Italian society, the nature of a podesta's duty, and the difficulties of its execution The office of senator survives* after more than six hundred years, but he no longer wields the "iron flail"[l] of Brancaleon, and his nomination proceeds, of course, from the supreme pontiff, not from the people In the twelfth and thirteenth centuries the senate and the senator who succeeded them, exercised one distinguishing attribute of sovereignty, that of coining gold and silver money Some of their coins still exist with legends in a very republican tone[m] Doubtless the temporal authority of the popes varied according to their personal character Innocent III had much more than his predecessors for al-

[i] The impertinent address of a Roman orator to Frederic and his answer are preserved in Otho of Frisingen, L ii c 22 but so much at length that we may suspect some exaggeration Otho is rather rhetorical. They may be read in Gibbon c 60

[j] Sismondi, t ii p 36 Besides Sismondi and Muratori, I would refer for the history of Rome during the middle ages to the last chapters of Gibbon's Decline and Fall

[k] Ibid p 308

* A D 1818

[l] The readers of Spenser will recollect the iron flail of Talus the attendant of Arthegal, emblematic of the severe justice of the lord deputy of Ireland. Sir Arthur Grey shadowed under that allegory

[m] Gibbon vol xii p 289 Muratori Antiquit. Ital. Dissert 27

most a century, or than some of his successors He made the senator take an oath of fealty to him, which, though not very comprehensive, must have passed in those times as a recognition of his superiority [a]

Though there was much less obedience to any legitimate power at Rome than anywhere else in Italy, even during the thirteenth century, yet, after the secession of the popes to Avignon, their own city was left in a far worse condition than before Disorders of every kind, tumult and robbery, prevailed in the streets The Roman nobility were engaged in perpetual war with each other Not content with their own fortified palaces, they turned the sacred monuments of antiquity into strongholds, and consummated the destruction of time and conquest At no period has the city endured such irreparable injuries, nor was the downfall of the western empire so fatal to its capital as the contemptible feuds of the Orsini and Colonna families Whatever there was of government, whether administered by a legate from Avignon or by the municipal authorities, had lost all hold on these powerful barons In the midst of this degradation and wretchedness, an obscure man, Nicola di Rienzi, conceived the project of restoring Rome, not only to good order, but even to her ancient greatness He had received an education beyond his birth, and nourished his mind with the study of the best writers After many harangues to the people, which the nobility, blinded by their self confidence, did not attempt to repress, Rienzi suddenly excited an insurrection and obtained complete success [A D 1347] He was placed at the head of a new government, with the title of tribune, and with almost unlimited power The first effects of this revolution were wonderful All the nobles submitted though with great reluctance, the roads were cleared of robbers tranquillity was restored at home, some severe examples of justice intimidated offenders and the tribune was regarded by all the people as the destined restorer of Rome and Italy Though the court of Avignon could not approve of such an usurpation it temporized enough not directly to oppose it Most of the Italian republics, and some of the princes sent ambassadors, and seemed to recognize pretensions which were tolerably ostentatious The King of Hungary and Queen of Naples sub-

[a] Sismond p 399

mitted their quarrel to the arbitration of Rienzi, who did not, however, undertake to decide upon it But this sudden exaltation intoxicated his understanding, and exhibited failings entirely incompatible with his elevated condition If Rienzi had lived in our own age, his talents, which were really great, would have found their proper orbit For his character was one not unusual among literary politicians—a combination of knowledge, eloquence, and enthusiasm for ideal excellence, with vanity, inexperience of mankind, unsteadiness, and physical timidity As these latter qualities became conspicuous, they eclipsed his virtues and caused his benefits to be forgotten, he was compelled to abdicate his government, and retire into exile After several years, some of which he passed in the prisons of Avignon, Rienzi was brought back to Rome, with the title of Senator, and under the command of the legate It was supposed that the Romans, who had returned to their habits of insubordination, would gladly submit to their favorite tribune And this proved the case for a few months, but after that time they ceased altogether to respect a man who so little respected himself in accepting a station where he could no longer be free, and Rienzi was killed in a sedition *o*

Once more, not long after the death of Rienzi, the freedom of Rome seems to have revived in republican institutions, though with names less calculated to inspire peculiar recollections Magistrates called bannerets, chosen from the thirteen districts of the city, with a militia of three thousand citizens at their command, were placed at the head of this commonwealth The great object of this new organization was to intimidate the Roman nobility, whose outrages, in the total absence of government, had grown intolerable Several of them were hanged the first year by order of the bannerets The citizens however had no serious intention of throwing

o Sismondi t. v. c. 37. t. vi. p. 201. Gibbon, c. 70. De Sade Vie de Pétrarque t. i. passim. Tiraboschi t. vi. p. 339. It is difficult to resist the admiration which all the romantic circumstances of Rienzi's history tend to excite and to which Petrarch so blindly gave way. That great man's characteristic excellence was not good common sense. He had imbibed two notions, of which it is hard to say which was the more absurd, that Rome had a legitimate right to all her ancient authority over the rest of the world, and that she was likely to recover this authority in consequence of the revolution produced by Rienzi. Giovanni Villani living at Florence and a stanch republican formed a very different estimate which weighs more than the enthusiastic panegyrics of Petrarch. La detta impresa del tribuno era un' opera fantastica e di poco durare. l. xii. c. 90. An illustrious female writer has drawn with a single stroke the character of Rienzi. Crescentius and Arnold of Brescia, the fond restorers of Roman liberty, *qui ont pris les souvenirs pour les espérances*. Corinne t. i. p. 152. Could Tacitus have excelled this?

off their allegiance to the popes They provided for their own security, on account of the lamentable secession and neglect of those who claimed allegiance while they denied protection But they were ready to acknowledge and welcome back their bishop as their sovereign Even without this they surrendered their republican constitution in 1362, it does not appear for what reason, and permitted the legate of Innocent VI to assume the government p We find, however, the institution of bannerets revived and in full authority some years afterwards But the internal history of Rome appears to be obscure, and I have not had opportunities of examining it minutely Some degree of political freedom the city probably enjoyed during the schism of the church, but it is not easy to discriminate the assertion of legitimate privileges from the licentious tumults of the barons or populace In 1435 the Romans formally took away the government from Eugenius IV, and elected seven signiors or chief magistrates, like the priors of Florence q But this revolution was not of long continuance On the death of Eugenius the citizens deliberated upon proposing a constitutional charter to the future pope Stephen Porcaro a man of good family and inflamed by a strong spirit of liberty, was one of their principal instigators But the people did not sufficiently partake of that spirit No measures were taken upon this occasion and Porcaro, whose ardent imagination disguised the hopelessness of his enterprise, tampering in a fresh conspiracy, was put to death under the pontificate of Nicholas V r

The province of Tuscany continued longer than Lombardy under the government of an imperial lieutenant It was not till about the middle of the twelfth century that the cities of Florence, Lucca Pisa Siena Arezzo, Pistoja and several less considerable which might perhaps have already their own elected magistrates became independent republics Their history is with the exception of Pisa very scanty till the death of Frederic II The earliest fact of any importance recorded of Florence occurs in 1184 when it is said that Frederic Barbarossa took from her the dominion over the district or

p Matt Villani pp 576, 604, 709 Sismond t v p 97 He seems to have overlooked the former period of government by bannerets and refers their institution to 1375.

q Script Rerum Italic t i par 2 p 1128.

r Id pp 113 1134 Sismond t x p 18.

county, and restored it to the rural nobility, on account of her attachment to the church.[s] This I chiefly mention to illustrate the system pursued by the cities of bringing the territorial proprietors in their neighborhood under subjection. During the reign of Frederic II. Florence became, as far as she was able, an ally of the popes. There was, indeed, a strong Ghibelin party, comprehending many of the greatest families, which occasionally predominated through the assistance of the emperor. It seems, however, to have existed chiefly among the nobility; the spirit of the people was thoroughly Guelf. After several revolutions, accompanied by alternate proscription and demolition of houses, the Guelf party, through the assistance of Charles of Anjou, obtained a final ascendency in 1266; and after one or two unavailing schemes of accommodation it was established as a fundamental law in the Florentine constitution that no person of Ghibelin ancestry could be admitted to offices of public trust, which, in such a government, was in effect an exclusion from the privileges of citizenship.

The changes of internal government and vicissitudes of success among factions were so frequent at Florence for many years after this time that she is compared by her great banished poet to one in sickness, who, unable to rest, gives herself momentary ease by continual change of posture in her bed.[t] They did not become much less numerous after the age of Dante. Yet the revolutions of Florence should, perhaps, be considered as no more than a necessary price of her liberty. It was her boast and her happiness to have escaped, except for one short period, that odious rule of vile usurpers under which so many other free cities had been crushed. A sketch of the constitution of so famous a republic ought not to be omitted in this place. Nothing else in the history of Italy after Frederic II. is so worthy of our attention.[u]

The basis of the Florentine polity was a division of the citizens exercising commerce into their several companies or arts. These were at first twelve; seven called the greater arts,

[s] Villani, l. v. c. 12.

[t] E se ben ti ricordi e vedi il lume,
Vedrai te somigliante a quella inferma,
Che non può trovar posa in sù le piume,
Ma con dar volta suo dolore scherma.
Purgatorio, cant. vi.

[u] I have found considerable difficulties in this part of my task, no author with whom I am acquainted giving a tolerable view of the Florentine government except M. Sismondi, who is himself not always satisfactory.

and five lesser, but the latter were gradually increased to fourteen The seven greater arts were those of lawyers and notaries, of dealers in foreign cloth, called sometimes Calimala, of bankers or money-changers, of woollen drapers, of physicians and druggists, of dealers in silk, and of furriers The inferior arts were those of retailers of cloth, butchers, smiths, shoemakers, and builders This division, so far at least as regarded the greater arts, was as old as the beginning of the thirteenth century[v] But it was fully established and rendered essential to the constitution in 1266 By the provisions made in that year each of the seven greater arts had a council of its own, a chief magistrate or consul, who administered justice in civil causes to all members of his company, and a banneret (gonfaloniere) or military officer, to whose standard they repaired when any attempt was made to disturb the peace of the city.

The administration of criminal justice belonged at Florence, as at other cities, to a foreign podestà, or rather to two foreign magistrates, the podesta and the capitano del popolo, whose jurisdiction, so far as I can trace it, appears to have been concurrent[w] In the first part of the thirteenth century the authority of the podesta may have been more extensive than afterwards These offices were preserved till the innovations of the Medici The domestic magistracies underwent more changes Instead of consuls, which had been the first denomination of the chief magistrates of Florence, a college of twelve or fourteen persons called Anziani or Buonuomini, but varying in name as well as number, according to revolutions of party, was established about the middle of the thirteenth century, to direct public affairs[x] This order was entirely changed in 1282, and gave place to a new form of supreme magistracy, which lasted till the extinction of the republic Six priors, elected every two months, one from each of the six quarters of the city, and from each of the greater arts, except that of lawyers, constituted an executive magistracy They lived during their continuance in office

v Ammirato ad ann. 1204 et 1235 Villani int mates, l. vii c. 13 that the arts existed as commercial companies before 1266. Machiavelli and Sismondi express themselves rather inaccurately as if they had been erected at that time, which indeed is the era of their political importance

w Matteo Villani p. 194. G. Villani places the institution of the podestà in 1207 we find it however, as early as 1184. Ammirato.

x G. Villani, l. vi. c. 39.

in a palace belonging to the city, and were maintained at the public cost The actual priors, jointly with the chiefs and councils (usually called la capitudine) of the seven greater arts, and with certain adjuncts (arroti) named by themselves, elected by ballot their successors Such was the practice for about forty years after this government was established But an innovation, begun in 1324, and perfected four years afterwards, gave a peculiar character to the constitution of Florence A lively and ambitious people, not merely jealous of their public sovereignty, but deeming its exercise a matter of personal enjoyment, aware at the same time that the will of the whole body could neither be immediately expressed on all occasions, nor even through chosen representatives, without the risk of violence and partiality, fell upon the singular idea of admitting all citizens not unworthy by their station or conduct to offices of magistracy by rotation Lists were separately made out by the priors, the twelve buonuomini, the chiefs and councils of arts, the bannerets and other respectable persons, of all citizens, Guelfs by origin, turned of thirty years of age, and, in their judgment, worthy of public trust The lists thus formed were then united, and those who had composed them, meeting together, in number ninety-seven, proceeded to ballot upon every name Whoever obtained sixty eight black balls was placed upon the reformed list, and all the names it contained being put on separate tickets into a bag or purse (imborsati) were drawn successively as the magistracies were renewed As there were above fifty of these, none of which could be held for more than four months several hundred citizens were called in rotation to bear their share in the government within two years But at the expiration of every two years the scrutiny was renewed and fresh names were mingled with those which still continued undrawn, so that accident might deprive a man for life of his portion of magistracy *y*

Four councils had been established by the constitution of 1266 for the decision of all propositions laid before them by the executive magistrates, whether of a legislative nature or

y Villan l ix c 27 l x c 110 l x c 105 Sismond t v p 174 This species of lottery recommending itself by an apparent fairness and incompatibility with undue influence was speedily adopted in all the neighboring republics and has always continued according to Sismond in Lucca and in those cities of the ecclesiastical state which preserved the privilege of choosing their municipal officers p 93

relating to public policy. These were now abrogated; and in their places were substituted one of 300 members, all plebeians, called consiglio di popolo, and one of 250, called consiglio di commune, into which the nobles might enter. These were changed by the same rotation as the magistracies, every four months [z] A parliament, or general assembly of the Florentine people, was rarely convoked; but the leading principle of a democratical republic, the ultimate sovereignty of the multitude, was not forgotten. This constitution of 1324 was fixed by the citizens at large in a parliament; and the same sanction was given to those temporary delegations of the signiory to a prince, which occasionally took place. What is technically called by their historians *farsi popolo* was the assembly of a parliament, or a resolution of all derivative powers into the immediate operation of the popular will.

The ancient government of this republic appears to have been chiefly in the hands of its nobility. These were very numerous, and possessed large estates in the district. But by the constitution of 1266, which was nearly coincident with the triumph of the Guelf faction, the essential powers of magistracy as well as of legislation were thrown into the scale of the commons The colleges of arts, whose functions became so eminent, were altogether commercial. Many, indeed, of the nobles enrolled themselves in these companies, and were among the most conspicuous merchants of Florence. These were not excluded from the executive college of the priors at its first institution in 1282. It was necessary, however, to belong to one or other of the greater arts in order to reach that magistracy. The majority, therefore, of the ancient families saw themselves pushed aside from the helm, which was intrusted to a class whom they had habitually held in contempt

It does not appear that the nobility made any overt opposition to these democratical institutions Confident in a force beyond the law, they cared less for what the law might provide against them They still retained the proud spirit of personal independence which had belonged to their ancestors in the fastnesses of the Apennines Though the laws of Florence and a change in Italian customs had transplanted their residence to the city, it was in strong and lofty houses that they dwelt, among their kindred, and among the fellows of their

[z] Villani, l. ix. c. 27, l. x. c. 110, l. xi. c. 105, Sismondi, t. v. p. 174.

highest magistracies for two or three generations, obtained an hereditary importance, which answered the purpose of more unequivocal nobility, just as in ancient Rome plebeian families, by admission to curule offices, acquired the character and appellation of nobility, and were only distinguishable by their genealogy from the original patricians *f* Florence had her plebeian nobles (popolani grandi), as well as Rome, the Peruzzi, the Ricci, the Albizi, the Medici, correspond to the Catos, the Pompeys, the Brutuses, and the Antonies But at Rome the two orders, after an equal partition of the highest offices were content to respect their mutual privileges, at Florence the commoner preserved a rigorous monopoly, and the distinction of high birth was that it debarred men from political franchises and civil justice *g*

This second aristocracy did not obtain much more of the popular affection than that which it superseded Public outrage and violation of law became less frequent, but the new leaders of Florence are accused of continual misgovernment at home and abroad, and sometimes of peculation There was of course a strong antipathy between the leading commoners and the ancient nobles, both were disliked by the people In order to keep the nobles under more control the governing party more than once introduced a new foreign magistrate, with the title of captain of defence (della guardia) whom they invested with an almost unbounded criminal jurisdiction One Gabrielli of Agobbio was twice fetched for this purpose, and in each case he behaved in so tyrannical a manner as to occasion a tumult *h* [A D 1336 and 1340] His office, however, was of short duration, and the title at least did not import a sovereign command But very soon afterwards Florence had to experience one taste of a cup which her neighbors had drunk off to the dregs, and to animate her magnanimous love of freedom by a knowledge of the calamities of tyranny

A war with Pisa, unsuccessfully, if not unskilfully, conducted, gave rise to such dissatisfaction in the city, that the leading commoners had recourse to an appointment some-

f La nobiltà è vile se bene non in baronaggi è capace di grandissimi honori perciochè esercitando i supremi magistrati della sua patria viene spesso a comandare a capitani d eserciti e ella stessa per se ò in mare ò in terra, molte volta i supremi carichi adopera. E tale è la Fiorentina nobiltà. Ammirato delle Famiglie Fiorentine Firenze, 1614 p. 25

g Quello che all' altre città suole recare splendore in Firenze era dannoso o veramente vano e inutile says Ammirato of nobility Stor a Fiorentina p. 161

h Villani l. xi. c 39 and 117

thing like that of Gabrielli, and from similar motives. Walter de Brienne, Duke of Athens, was descended from one of the French crusaders who had dismembered the Grecian empire in the preceding century; but his father, defeated in battle, had lost the principality along with his life, and the titular duke was an adventurer in the court of France. He had been, however, slightly known at Florence on a former occasion. There was a uniform maxim among the Italian republics that extraordinary powers should be conferred upon none but strangers The Duke of Athens was accordingly pitched upon for the military command, which was united with domestic jurisdiction. This appears to have been promoted by the governing party in order to curb the nobility; but they were soon undeceived in their expectations The first act of the Duke of Athens was to bring four of the most eminent commoners to capital punishment for military offences. These sentences, whether just or otherwise, gave much pleasure to the nobles, who had so frequently been exposed to similar severity, and to the populace, who are naturally pleased with the humiliation of their superiors. Both of these were caressed by the duke, and both conspired, with blind passion, to second his ambitious views. It was proposed and carried in a full parliament, or assembly of the people, to bestow upon him the signiory for life [A D 1342.] The real friends of their country, as well as the oligarchy, shuddered at this measure. Throughout all the vicissitudes of party Florence had never yet lost sight of republican institutions. Not that she had never accommodated herself to temporary circumstances by naming a signior. Charles of Anjou had been invested with that dignity for the term of ten years; Robert King of Naples, for five; and his son, the Duke of Calabria, was at his death signior of Florence These princes named the podestà, if not the priors; and were certainly pretty absolute in their executive powers, though bound by oath not to alter the statutes of the city[i] But their office had always been temporary Like the dictatorship of Rome, it was a confessed, unavoidable evil; a suspension, but not extinguishment, of rights Like that, too, it was a dangerous precedent, through which crafty ambition and popular rashness might ultimately subvert the republic. If Walter de Brienne had possessed the subtle prudence of a Mat-

[i] Villani, L. ix. c. 55, 60, 135, 328.

of the college having merely the function of advice and assistance *p*

Several years elapsed before any material disturbance arose at Florence Her contemporary historian complains, indeed, that mean and ignorant persons obtained the office of prior, and ascribes some errors in her external policy to this cause *q* Besides the natural effects of the established rotation, a particular law, called the *divieto*, tended to throw the better families out of public office By this law two of the same name could not be drawn for any magistracy which, as the ancient families were extremely numerous, rendered it difficult for their members to succeed, especially as a ticket once drawn was not replaced in the purse so that an individual liable to the divieto was excluded until the next biennial revolution *r* This created dissatisfaction among the leading families They were likewise divided by a new faction entirely founded, as far as appears on personal animosity between two prominent houses, the Albizi and the Ricci The city was, however, tranquil, when in 1357 a spring was set in motion which gave quite a different character to the domestic history of Florence

At the time when the Guelfs with the assistance of Charles of Anjou acquired an exclusive domination in the republic the estates of the Ghibelins were confiscated One third of these confiscations was allotted to the state, another went to repair the losses of Guelf citizens, but the remainder became the property of a new corporate society, denominated the Guelf party (parte Guelfa) with a regular internal organization The Guelf party had two councils one of fourteen and one of sixty members three or afterwards four captains, elected by scrutiny every two months a treasury and common seal, a little republic within the republic of Florence Their primary duty was to watch over the Guelf interest and for this purpose they had a particular officer for the accusation of suspected Ghibelins *s* We hear not much however of the Guelf society for nearly a century after their establishment The Ghibelins hardly ventured to show themselves after the fall of the White Guelfs in 1304 with whom they had been connected and confiscation had almost annihilated that unfortunate faction But as the oli-

p Nardi Storia di Firenze p 7 ed t 1584 Villani loc cit
q Matteo Villani in Script. Rer Italic t xiv p. 95, 244.
r Sismondi, t vi. p. 338.
s G Villani l vii. c. 16.

scent, upon testimony of public fame, became liable to punishment, capital or pecuniary, at the discretion of the priors To this law they gave a retrospective effect, and indeed it appears to have been little more than a revival of the provisions made in 1347, which had probably been disregarded Many citizens who had been magistrates within a few years were cast in heavy fines on this indefinite charge But the more usual practice was to warn (ammonire) men beforehand against undertaking public trust If they neglected this hint, they were sure to be treated as convicted Ghibelins Thus a very numerous class, called Ammoniti, was formed of proscribed and discontented persons, eager to throw off the intolerable yoke of the Guelf society For the imputation of Ghibelin connections was generally an unfounded pretext for crushing the enemies of the governing faction [u] Men of approved Guelf principles and origin were every day warned from their natural privileges of sharing in magistracy This spread a universal alarm through the city but the great advantage of union and secret confederacy rendered the Guelf society, who had also the law on their side, irresistible by their opponents Meanwhile the public honor was well supported abroad, Florence had never before been so distinguished as during the prevalence of this oligarchy [v]

The Guelf society had governed with more or less absoluteness for nearly twenty years, when the republic became involved through the perfidious conduct of the papal legate, in a war with the Holy See Though the Florentines were by no means superstitious this hostility to the church appeared almost an absurdity to determined Guelfs, and shocked those prejudices about names which make up the politics of vulgar minds The Guelf society though it could not openly resist the popular indignation against Gregory XI, was not heartily inclined to this war Its management fell therefore into the hands of eight commissioners some of them not well affected to the society whose administration was so successful and

[u] Res des the effect of ancient prejudice Ghibelinism was considered at Florence in the fourteenth century as immediately connected with tyrannical usurpation The Guelf party says Matteo Villani is the foundation rock of liberty in Italy so that if any Guelf becomes a tyrant he must of necessity turn to the Ghibelin side and of this there have been many instances p 481 So Giovanni Villani says of Passerino, lord of Mantua that his ancestors had been Guelfs ma per essere signore e tranno si fece Chibellino l x c 99. And Matteo Villani of the Pepoli at Bologna essendo di natura Guelfi per la tirannia erano quasi alienati della parte p. 69.

[v] M Villani pp 511 637 731 Ammirato Machiavelli Sismondi.

popular as to excite the utmost jealousy in the Guelfs They began to renew their warnings, and in eight months excluded fourscore citizens [w]

The tyranny of a court may endure for ages, but that of a faction is seldom permanent In June, 1378, the gonfalonier of justice was Salvestro de' Medici, a man of approved patriotism, whose family had been so notoriously of Guelf principles that it was impossible to warn him from office He proposed to mitigate the severity of the existing law His proposition did not succeed, but its rejection provoked an insurrection, the forerunner of still more alarming tumults The populace of Florence, like that of other cities, was terrible in the moment of sedition, and a party so long dreaded shrank before the physical strength of the multitude Many leaders of the Guelf society had their houses destroyed and some fled from the city But instead of annulling their acts, a middle course was adopted by the committee of magistrates who had been empowered to reform the state, the Ammoniti were suspended three years longer from office, and the Guelf society preserved with some limitations This temporizing course did not satisfy either the Ammoniti or the populace The greater arts were generally attached to the Guelf society Between them and the lesser arts, composed of retail and mechanical traders, there was a strong jealousy The latter was adverse to the prevailing oligarchy and to the Guelf society, by whose influence it was maintained They were eager to make Florence a democracy in fact as well as in name by participating in the executive government

But every political institution appears to rest on too confined a basis to those whose point of view is from beneath it While the lesser arts were murmuring at the exclusive privileges of the commercial aristocracy there was yet an inferior class of citizens who thought their own claims to equal privileges irrefragable The arrangement of twenty one trading companies had still left several kinds of artisans unincorporated, and consequently unprivileged These had been attached to the art with which their craft had most connections in a sort of dependent relation Thus to the company of drapers the most wealthy of all the various occupations instrumental in the manufacture, as woolcombers dyers and weavers were ap-

[w] Ammirato p 99.

pendant * Besides the sense of political exclusion, these artisans alleged that they were oppressed by their employers of the art, and that, when they complained to the consul, their judge in civil matters, no redress could be procured. A still lower order of the community was the mere populace, who did not practise any regular trade, or who only worked for daily hire These were called ciompi a corruption, it is said, of the French compere

"Let no one" says Machiavelli in this place, "who begins an innovation in a state expect that he shall stop it at his pleasure or regulate it according to his intention" After about a month from the first sedition another broke out, in which the ciompi, or lowest populace were alone concerned Through the surprise, or cowardice, or disaffection of the superior citizens, this was suffered to get ahead and for three days the city was in the hand of a tumultuous rabble It was vain to withstand their propositions had they even been more unreasonable than they were. But they only demanded the establishment of two new arts for the trades hitherto dependent, and one for the lower people and that three of the priors should be chosen from the greater arts three from the fourteen lesser, and two from those just created Some delay, however, occurring to prevent the sanction of these innovations by the councils a new fury took possession of the populace, the gates of the palace belonging to the signiory were forced open the priors compelled to fly, and no appearance of a constitutional magistracy remained to throw the veil of law over the excesses of anarchy The republic seemed to rock from its foundations and the circumstance to which historians ascribe its salvation is not the least singular in this critical epoch One Michel di Lando, a woolcomber half dressed and without shoes happened to hold the standard of justice wrested from the proper officer when the populace burst into the palace Whether he was previously conspicuous in the tumult is not recorded but the wild capricious mob who had destroyed what they had no conception how to rebuild suddenly cried out that Lando should be gonfalonier or signior and reform the city at his pleasure

A choice arising probably from wanton folly could not have been better made by wisdom Lando was a man of courage,

* Before the year 1340, according to Villani's calculation, the woollen trade occupied 30,000 persons, l. xi. c. 93.

moderation and integrity He gave immediate proofs of these qualities by causing his office to be respected The eight commissioners of the war, who though not instigators of the sedition were well pleased to see the Guelf party so entirely prostrated now fancied themselves masters and began to nominate priors

But Lando sent a message to them, that he was elected by the people, and that he could dispense with their assistance He then proceeded to the choice of priors Three were taken from the greater arts, three from the lesser, and three from the two new arts and the lower people This eccentric college lost no time in restoring tranquillity, and compelled the populace by threat of punishment to return to their occupations But the ciompi were not disposed to give up the pleasures of anarchy so readily They were dissatisfied at the small share allotted to them in the new distribution of offices and murmured at their gonfalonier as a traitor to the popular cause Lando was aware that an insurrection was projected he took measures with the most respectable citizens the insurgents, when they showed themselves were quelled by force and the gonfalonier retired from office with an approbation which all historians of Florence have agreed to perpetuate Part of this has undoubtedly been founded on a consideration of the mischief which it was in his power to inflict The ciompi once checked were soon defeated The next gonfalonier was like Lando a woolcomber, but wanting the intrinsic merit of Lando his mean station excited universal contempt None of the arts could endure their low coadjutors a short struggle was made by the populace but they were entirely overpowered with considerable slaughter and the government was divided between the seven greater and sixteen lesser arts in nearly equal proportions

The party of the lesser arts or inferior tradesmen which had begun this confusion were left winners when it ceased Three men of distinguished families who had instigated the revolution became the leaders of Florence Benedetto Alberti Tomaso Strozzi and Georgio Scali Their government had at first to contend with the ciompi smarting under loss and disappointment But a populace which is beneath the inferior mechanics may with ordinary prudence be kept in subjection by a government that has a well organized militia at its command The

Guelf aristocracy was far more to be dreaded Some of them had been banished some fined, some ennobled the usual consequences of revolution which they had too often practised to complain

A more iniquitous proceeding disgraces the new administration Under pretence of conspiracy, the chief of the house of Albizi and several of his most eminent associates were thrown into prison So little evidence of the charge appeared that the podesta refused to condemn them but the people were clamorous for blood and half with half without the forms of justice these noble citizens were led to execution The part he took in this murder sullies the fame of Benedetto Alberti who in his general conduct had been more uniformly influenced by honest principles than most of his contemporaries Those who shared with him the ascendency in the existing government Strozzi and Scali abused their power by oppression towards their enemies and insolence towards all Their popularity was of course soon at an end Alberti a sincere lover of freedom separated himself from men who seemed to emulate the arbitrary government they had overthrown An outrage of Scali in rescuing a criminal from justice brought the discontent to a crisis he was arrested and lost his head on the scaffold while Strozzi his colleague fled from the city But this event was instantly followed by a reaction which Alberti perhaps did not anticipate Armed men filled the streets the cry of Live the Guelfs! was heard After a three years depression the aristocratical party regained its ascendency They did not revive the severity practised towards the Ammoniti but the two new arts created for the small trades were abolished and the lesser arts reduced to a third part instead of something more than one half of public offices Several persons who had favored the plebeians were sent into exile and among these Michel di Lando whose great services in subduing anarchy ought to have secured the protection of every government Benedetto Alberti the enemy by turns of every faction—because every faction was in its turn oppressive—experienced some years afterwards the same fate For half a century after this time no revolution took place at Florence The Guelf aristocracy strong in opulence and antiquity and rendered prudent by experience under the guidance of the Albizi family maintained a preponderating influence without

much departing, the times considered, from moderation and respect for the laws y

It is sufficiently manifest, from this sketch of the domestic history of Florence, how far that famous republic was from affording a perfect security for civil rights or general tranquillity They who hate the name of free constitutions may exult in her internal dissensions as in those of Athens or Rome But the calm philosopher will not take his standard of comparison from ideal excellence, nor even from that practical good which has been reached in our own unequalled constitution and in some of the republics of modern Europe The men and the institutions of the fourteenth century are to be measured by their contemporaries Who would not rather have been a citizen of Florence than a subject of the Visconti? In a superficial review of history we are sometimes apt to exaggerate the vices of free states and to lose sight of those inherent in tyrannical power The bold censoriousness of republican historians, and the cautious servility of writers under an absolute monarchy, conspire to mislead us as to the relative prosperity of nations Acts of outrage and tumultuous excesses in a free state are blazoned in minute detail and descend to posterity the deeds of tyranny are studiously and perpetually suppressed Even those historians who have no particular motives for concealment turn away from the monotonous and disgusting crimes of tyrants 'Deeds of cruelty, it is well observed by Matteo Villani after relating an action of Bernabo Visconti are little worthy of remembrance yet let me be excused for having recounted one out of many, as an example of the peril to which men are exposed under the yoke of an unbounded tyranny z The reign of Bernabo afforded abundant instances of a like kind Second only to Eccelin among the tyrants of Italy he rested the security of his dominion upon tortures and death and his laws themselves enact the protraction of capital punishment through forty days of suffering a His nephew, Giovanni Maria is said with a madness like that of Nero or Commodus to have coursed the streets of Milan by night with

y For this part of Florentine history besides Ammirato Machiavelli and Sismondi, I have read an interesting narrative of the sedition of the Ciompi by Gino Capponi in the eighteenth volume of Muratori's collection. It has an air of liveliness and truth which is very pleasing but it breaks off rather too soon at the instant of Landos assuming the office of banneret. Another contemporary writer Melchione de Stefani who seems to have furnished the materials of the three historians above mentioned has not fallen in my way

z P. 434

a Sismondi t. v. p. 36 Corio, Ist. di Milano p. 486.

blood hounds, ready to chase and tear any unlucky passenger [b] Nor were other Italian principalities free from similar tyrants, though none perhaps, upon the whole so odious as the Visconti The private history of many families, such, for instance, as the Scala and the Gonzaga is but a series of assassinations The ordinary vices of mankind assumed a tint of portentous guilt in the palaces of Italian princes Their revenge was fratricide, and their lust was incest

Though fertile and populous the proper district of Florence was by no means extensive An independent nobility occupied the Tuscan Appennines with their castles Of these the most conspicuous were the counts of Guidi a numerous and powerful family who possessed a material influence in the affairs of Florence and of all Tuscany till the middle of the fourteenth century, and some of whom preserved their independence much longer [c] To the south, the republics of Arezzo Perugia and Siena, to the west those of Volterra Pisa and Lucca, Prato and Pistoja to the north limited the Florentine territory It was late before these boundaries were removed During the usurpations of Uguccione at Pisa and of Castruccio at Lucca the republic of Florence was always unsuccessful in the field After the death of Castruccio she began to act more vigorously, and engaged in several confederacies with the powers of Lombardy especially in a league with Venice against Mastino della Scala But the republic made no acquisition of territory till 1351 when she annexed the small city of Prato not ten miles from her walls [d] Pistoja though still nominally independent received a Florentine garrison about the same time Several additions were made to the district by fair purchase from the nobility of the Apennines and a few by main force The territory was still very little proportioned to the fame and power of Florence The latter was founded upon her vast commercial opulence Every Italian state employed mercenary troops, and the richest was of course the most powerful In the war against Mastino della Scala in 1336 the revenues of Florence are reckoned by Villani at three hundred thousand florins which, as he observes is more than the king of Naples or of

[b] Corio p 595

[c] G Villani L v c 37 41 et al b The last of the counts Guidi having unwisely embarked in a confederacy against Florence was obliged to give up ancient patrimony in 1440.

M Villani p 72 This was rather a measure of usurpation but the republic had some reason to apprehend that Prato might fall into the hands of the Visconti Their conduct towards Pistoja was influenced by the same motive but it was still further removed from absolute justice p 9

Aragon possesses e The expenditure went at that time very much beyond the receipt, and was defrayed by loans from the principal mercantile firms, which were secured by public funds, the earliest instance, I believe, of that financial resource f Her population was computed at ninety thousand souls Villani reckons the district at eighty thousand men, I suppose those only of military age; but this calculation must have been too large, even though he included, as we may presume, the city in his estimate g Tuscany, though well cultivated and flourishing, does not contain by any means so great a number of inhabitants in that space at present

The first eminent conquest made by Florence was that of Pisa, early in the fifteenth century. Pisa had been distinguished as a commercial city ever since the age of the Othos From her ports, and those of Genoa, the earliest naval armaments of the western nations were fitted out against the Saracen corsairs who infested the Mediterranean coasts In the eleventh century she undertook, and, after a pretty long struggle, completed, the important, or at least the splendid, conquest of Sardinia, an island long subject to a Moorish chieftain

e G Villani l ix. c 90-93 These chapters contain a very full and interesting statement of the revenues expenses, population and internal condition of Florence at that time Part of them is extracted by M Sismondi t v p 365. The gold florin was worth about ten shillings of our money The district of Florence was not then much larger than Middlesex

f G. Villani, l. xi c 49.

g C 93 Troviamo diligentemente, che in questi tempi avea in Firenze circa a 25 mila uomini da portare arme da 15 in 70 anni—Stimavasi avere in Firenze da 90 mila bocche tra uomini e femmine e fanciulli, per l avviso del pane bisognava al continuo alla città. These proportions of 25,000 men between fifteen and seventy and of 90,000 souls are as nearly as possible consonant to modern calculation, of which Villani knew nothing which confirms his accuracy though M Sismondi asserts p 369, that the city contained 150,000 inhabitants on no better authority as far as appears than that of Boccaccio who says that 100 000 perished in the great plague of 1348, which was generally supposed to destroy two out of three But surely two vague suppositions are not to be combined in order to overthrow such testimony as that of Villani who seems to have consulted all registers and other authentic documents in his reach.

What Villani says of the population of the district may lead us to reckon it, perhaps at about 180 000 souls allowing the baptisms to be one in thirty of the population. Ragionavasi in questi tempi avere nel contado e distretto di Firenze de 80 mila uomini Troviamo del piovano che batterzava i fanciulli imperoche per ogni maschio che batterzava in San Giovanni, per avere il novero, metea una fava nera, e per ogni femmina una bianca, trovò, ch erano l anno in questi tempi dalle 5 800 in sei mila avanzando le più volte il sesso mascolino da 300 in 500 per anno Baptisms could only be performed in one public font at Florence 1182, and some other cities. The building that contained this font was called the Baptistery The baptisteries of Florence and Pisa still remain, and are well known. Du Cange, v Baptisterium But there were fifty seven parishes and one hundred and ten churches within the city Villani ibid Mr Roscoe has published a manuscript, evidently written after the taking of Pisa in 1406 though, as I should guess not long after that event containing a proposition for an income tax of ten per cent throughout the Florentine dominions. Among its other calculations, the population is reckoned at 400,000; assuming that to be the proportion to 80,000 men of military age, though certainly beyond the mark It is singular that the district of Florence in 1343 is estimated by Villani to contain as great a number before Pisa Volterra or even Prato and Pistoja had been annexed to it—Roscoe's Life of Lorenzo Appendix, No 16.

faction and the tyrants of her own. Pisa fell several times under the yoke of usurpers; she was included in the wide-spreading acquisitions of Gian Galeazzo Visconti At his death one of his family seized the dominion, and finally the Florentines purchased for 400,000 florins a rival and once equal city. The Pisans made a resistance more according to what they had been than what they were.

The early history of Genoa, in all her foreign relations, is involved in that of Pisa. As allies against the Saracens of Africa, Spain, and the Mediterranean islands, as corrivals in commerce with these very Saracens or with the Christians of the East, as co-operators in the great expeditions under the banner of the cross, or as engaged in deadly warfare with each other, the two republics stand in continual parallel. From the beginning of the thirteenth century Genoa was, I think, the more prominent and flourishing of the two. She had conquered the island of Corsica at the same time that Pisa reduced Sardinia; and her acquisition, though less considerable, was longer preserved. Her territory at home, the ancient Liguria, was much more extensive, and, what was most important, contained a greater range of sea-coast than that of Pisa. But the commercial and maritime prosperity of Genoa may be dated from the recovery of Constantinople by the Greeks in 1261. Jealous of the Venetians, by whose arms the Latin emperors had been placed, and were still maintained, on their throne, the Genoese assisted Palæologus in overturning that usurpation They obtained in consequence the suburb of Pera or Galata, over against Constantinople, as an exclusive settlement, where their colony was ruled by a magistrate sent from home, and frequently defied the Greek capital with its armed galleys and intrepid seamen. From this convenient station Genoa extended her commerce into the Black Sea, and established her principal factory at Caffa, in the Crimean peninsula. This commercial monopoly, for such she endeavored to render it, aggravated the animosity of Venice. As Pisa retired from the field of waters, a new enemy appeared upon the horizon to dispute the maritime dominion of Genoa. Her first war with Venice was in 1258 The second was not till after the victory of Meloria had crushed her more ancient enemy. It broke out in 1293, and was prosecuted with determined fury and a great display of naval strength on both sides. One Genoese arma-

ment, as we are assured by an historian, consisted of one hundred and fifty-five galleys, each manned with from two hundred and twenty to three hundred sailors,[m] a force astonishing to those who know the more slender resources of Italy in modern times, but which is rendered credible by several analogous facts of good authority Genoa was, however, beyond any other exertion The usual fleets of Genoa and Venice were of seventy to ninety galleys

Perhaps the naval exploits of these two republics may afford a more interesting spectacle to some minds than any other part of Italian history Compared with military transactions of the same age, they are more sanguinary, more brilliant, and exhibit full as much skill and intrepidity But maritime warfare is scanty in circumstances, and the indefiniteness of its locality prevents it from resting in the memory And though the wars of Genoa and Venice were not always so unconnected with territorial politics as those of the former city with Pisa, yet, from the alternation of success and equality of forces, they did not often produce any decisive effect One memorable encounter in the Sea of Marmora, where the Genoese fought and conquered single-handed against the Venetians, the Catalans, and the Greeks, hardly belongs to Italian history[n]

But the most remarkable war, and that productive of the greatest consequences, was one that commenced in 1378, after several acts of hostility in the Levant, wherein the Venetians appear to have been the principal aggressors Genoa did not stand alone in this war A formidable confederacy was raised against Venice, who had given provocation to many enemies Of this Francis Carrara, signior of Padua and the king of Hungary were the leaders But the principal struggle was as usual, upon the waves During the winter of 1378 a Genoese fleet kept the sea, and ravaged the shores of Dalmatia The Venetian armament had been weakened by an epidemic disease, and when Vittor Pisani, their admiral, gave battle to the enemy, he was compelled to fight with a hasty conscription of landsmen against the best sailors in the world Entirely defeated, and taking refuge at Venice with only seven galleys, Pisani was cast into prison, as if his ill fortune had been his crime Meanwhile the Genoese fleet, augmented by a strong reinforcement, rode before the long natural ramparts that separate the lagunes

[m] Muratori, A.D 1295. [n] Gibbon c. 63.

the doge had announced his intention to raise the siege of Chioggia, if expected succors did not arrive by the 1st of January, 1380 On that very day Carlo Zeno, an admiral who, ignorant of the dangers of his country, had been supporting the honor of her flag in the Levant and on the coast of Liguria, appeared with a reinforcement of eighteen galleys and a store of provisions From that moment the confidence of Venice revived The fleet, now superior in strength to the enemy, began to attack them with vivacity After several months of obstinate resistance the Genoese, whom their republic had in effectually attempted to relieve by a fresh armament blocked up in the town of Chioggia, and pressed by hunger, were obliged to surrender Nineteen galleys only out of forty eight were in good condition, and the crews were equally diminished in the ten months of their occupation of Chioggia The pride of Genoa was deemed to be justly humbled, and even her own historian confesses that God would not suffer so noble a city as Venice to become the spoil of a conqueror *p*

Each of the two republics had sufficient reason to lament their mutual prejudices and the selfish cupidity of their merchants which usurps in all maritime countries the name of patriotism Though the capture of Chioggia did not terminate the war both parties were exhausted and willing next year, to accept the mediation of the Duke of Savoy By the peace of Turin Venice surrendered most of her territorial possessions to the king of Hungary That prince and Francis Carrara were the only gainers Genoa obtained the isle of Tenedos one of the original subjects of dispute, a poor indemnity for her losses Though upon a hasty view, the result of this war appears more unfavorable to Venice yet in fact it is the epoch of the decline of Genoa From this time she never commanded the ocean with such navies as before, her commerce gradually went into decay and the fifteenth century, the most splendid in the annals of Venice, is till recent times the most ignominious in those of Genoa But this was partly owing to internal dissensions, by which her liberty, as well as glory, was for a while suspended

At Genoa as in other cities of Lombardy, the principal mag

p G Stella, Annales Genuenses Gataro Istoria Padovana. Both these contemporary works of which the latter gives the best relation are in the seventeenth volume of Muratori s collection Sismond s narrative is very clear and spirited —Hist. des Republ Ital t v pp. 205 232.

istrates of the republic were originally styled consuls. A chronicle drawn up under the inspection of the senate perpetuates the names of these early magistrates. It appears that their number varied from four to six, annually elected by the people in their full parliament. These consuls presided over the republic and commanded the forces by land and sea; while another class of magistrates, bearing the same title, were annually elected by the several companies into which the people were divided, for the administration of civil justice[q] This was the regimen of the twelfth century; but in the next Genoa fell into the fashion of intrusting the executive power to a foreign podestà. The podestà was assisted by a council of eight, chosen by the eight companies of nobility. This institution, if indeed it were anything more than a custom or usurpation, originated probably not much later than the beginning of the thirteenth century. It gave not only an aristocratic, but almost an oligarchical character to the constitution, since many of the nobility were not members of these eight societies. Of the senate or councils we hardly know more than their existence; they are very little mentioned by historians. Everything of a general nature, everything that required the expression of public will, was reserved for the entire and unrepresented sovereignty of the people. In no city was the parliament so often convened; for war, for peace, for alliance, for change of government[r] These very dissonant elements were not likely to harmonize. The people, sufficiently accustomed to the forms of democracy to imbibe its spirit, repined at the practical influence which was thrown into the scale of the nobles Nor did some of the latter class scruple to enter that path of ambition which leads to power by flattery of the populace. Two or three times within the thirteenth century a high-born demagogue had nearly overturned the general liberty, like the Torriani at Milan, through the pretence of defending that of individuals[s] Among the nobility themselves four houses were distinguished beyond all the rest —the Grimaldi, the Fieschi, the Doria, the Spinola; the two former of Guelf politics, the latter adherents of the empire[t] Perhaps their equality of forces, and a jealousy which even the families of the same faction entertained of each other, prevented any one from usurping the signiory at Genoa Neither the

q Sismondi, t i p 353
r Id p 3-4
s Id t iii p 319.
t Id t iii p 328.

Guelf nor Ghibelin party obtaining a decided preponderance, continual revolutions occurred in the city. The most celebrated was the expulsion of the Ghibelins under the Doria and Spinola in 1318. They had recourse to the Visconti of Milan, and their own resources were not unequal to cope with their country. The Guelfs thought it necessary to call in Robert King of Naples, always ready to give assistance as the price of dominion, and conferred upon him the temporary sovereignty of Genoa. A siege of several years' duration, if we believe an historian of that age, produced as many remarkable exploits as that of Troy. They have not proved so interesting to posterity. The Ghibelins continued for a length of time excluded from the city, but in possession of the seaport of Savona, whence they traded and equipped fleets, as a rival republic, and even entered into a separate war with Venice.* Experience of the uselessness of hostility, and the loss to which they exposed their common country, produced a reconciliation, or rather a compromise, in 1331, when the Ghibelins returned to Genoa. But the people felt that many years of misfortune had been owing to the private enmities of four overbearing families. An opportunity soon offered of reducing their influence within very narrow bounds.

The Ghibelin faction was at the head of affairs in 1339, a Doria and a Spinola being its leaders, when the discontent of a large fleet in want of pay broke out in open insurrection. Savona and the neighboring towns took arms avowedly against the aristocratical tyranny; and the capital was itself on the point of joining the insurgents There was, by the Genoese constitution, a magistrate named the abbot of the people, acting as a kind of tribune for their protection against the oppression of the nobility His functions are not, however, in any book I have seen, very clearly defined This office had been abolished by the present government, and it was the first demand of the malcontents that it should be restored. This was acceded to, and twenty delegates were appointed to make the choice While they delayed, and the populace was grown weary with waiting, a nameless artisan called out from an elevated station that he could direct them to a fit person. When the people, in jest, bade him speak on, he uttered the name of Simon Boccanegra. This was a man of noble birth, and well esteemed,

* Villani, l. ix. passim.

who was then present among the crowd. The word was suddenly taken up, a cry was heard that Boccanegra should be abbot; he was instantly brought forward, and the sword of justice forced into his hand As soon as silence could be obtained he modestly thanked them for their favor, but declined an office which his nobility disqualified him from exercising At this a single voice out of the crowd exclaimed, "*Signior!*" and this title was reverberated from every side. Fearful of worse consequences, the actual magistrates urged him to comply with the people and accept the office of abbot. But Boccanegra, addressing the assembly, declared his readiness to become their abbot, signior, or whatever they would The cry of "Signior!" was now louder than before; while others cried out, "Let him be duke!" The latter title was received with greater approbation; and Boccanegra was conducted to the palace, the first duke, or doge, of Genoa.[v]

Caprice alone, or an idea of more pomp and dignity, led the populace, we may conjecture, to prefer this title to that of signior; but it produced important and highly beneficial consequences. In all neighboring cities an arbitrary government had been already established under their respective signiors; the name was associated with indefinite power, while that of doge had only been taken by the elective and very limited chief magistrate of another maritime republic. Neither Boccanegra nor his successors ever rendered their authority unlimited or hereditary. The constitution of Genoa, from an oppressive aristocracy, became a mixture of the two other forms, with an exclusion of the nobles from power Those four great families who had domineered alternately for almost a century lost their influence at home after the revolution of 1339 Yet, what is remarkable enough, they were still selected in preference for the highest of trusts; their names are still identified with the glory of Genoa, her fleets hardly sailed but under a Doria, a Spinola, or a Grimaldi; such confidence could the republic bestow upon their patriotism, or that of those whom they commanded Meanwhile two or three new families, a plebeian oligarchy, filled their place in domestic honors; the Adorni, the Fregosi, the Montalti, contended for the ascendant From their competition ensued revolutions too numerous almost for a separate history; in four years, from 1390 to 1394, the doge was ten

[v] G. Stella. Annal. Genuenses in Script. Rer Ital. t. xvii. p. 1072.

times changed, swept away or brought back in the fluctuations of popular tumult Antoniotto Adorno, four times doge of Genoa, had sought the friendship of Gian Galeazzo Visconti, but that crafty tyrant meditated the subjugation of the republic, and played her factions against one another to render her fall secure Adorno perceived that there was no hope for ultimate independence but by making a temporary sacrifice of it His own power, ambitious as he had been, he voluntarily resigned, and placed the republic under the protection or signiory of the king of France Terms were stipulated very favorable to her liberties, but, with a French garrison once received into the city, they were not always sure of observance [w]

While Genoa lost even her political independence, Venice became more conspicuous and powerful than before That famous republic deduces its origin, and even its liberty, from an era beyond the commencement of the middle ages The Venetians boast of a perpetual emancipation from the yoke of barbarians From that ignominious servitude some natives, or, as their historians will have it, nobles, of Aquileja and neighboring towns,[x] fled to the small cluster of islands that rise amidst the shoals at the mouth of the Brenta Here they built the town of Rivoalto, the modern Venice, in 421, but their chief settlement was, till the beginning of the ninth century, at Malamocco A living writer has, in a passage of remarkable eloquence, described the sovereign republic, immovable upon the bosom of the waters from which her palaces emerge, contemplating the successive tides of continental invasion, the rise and fall of empires, the change of dynasties, the whole moving scene of human revolution, till, in her own turn, the last surviving witness of antiquity, the common link between two periods of civilization has submitted to the destroying hand of time [y] Some part of this renown must on a cold blooded scrutiny, be detracted from Venice Her independence was, at the best, the fruit of her obscurity Neglected upon their islands a people of fishermen might without molestation elect their own magistrates, a very equivocal proof of sovereignty in cities much more considerable than Venice But both the western and the eastern empire alternately pretended to exercise dominion over her, she was conquered by Pepin son of Charlemagne, and restored by

[w] Sismond t vii pp 237 367
[x] Ebbe principio says Sanuto haugh tly non da pastori come ebbe Roma, ma da potenti e nobili
[y] Sismondi t i. p. 309.

him, as the chronicles say, to the Greek Emperor Nicephorus[1] There is every appearance that the Venetians had always considered themselves as subject, in a large sense not exclusive of their municipal self government, to the eastern empire: And this connection was not broken, in the early part, at least, of the tenth century But, for every essential purpose, Venice might long before be deemed an independent state Her doge was not confirmed at Constantinople, she paid no tribute and lent no assistance in war Her own navies, in the ninth century, encountered the Normans, the Saracens and the Sclavonians in the Adriatic Sea Upon the coast of Dalmatia were several Greek cities, which the empire had ceased to protect, and which, like Venice itself, became republics for want of a master Ragusa was one of these, and, more fortunate than the rest, survived as an independent city till our own age In return for the assistance of Venice, these little seaports put themselves under her government, the Sclavonian pirates were repressed, and after acquiring, partly by consent, partly by arms a large tract of maritime territory, the doge took the title of Duke of Dalmatia which is said by Dandolo to have been confirmed at Constantinople [A D 997] Three or four centuries however, elapsed before the republic became secure of these conquests which were frequently wrested from her by rebellions of the inhabitants or by her powerful neighbor, the king of Hungary

A more important source of Venetian greatness was commerce In the darkest and most barbarous period before Genoa or even Pisa had entered into mercantile pursuits, Venice carried on an extensive traffic both with the Greek and Saracen regions of the Levant The crusades enriched and aggrandized Venice more perhaps than any other city Her splendor may however be dated from the taking of Constantinople by the Latins in 1204 In this famous enterprise which diverted a great armament destined for the recovery of Jeru

[1] Nicephorus stipulates with Charlemagne for his faithful city of Venice Quæ in devotione imperii Ilatee steterant Danduli Chron con in Muratori Script Rer Ital t xii p 156 In the tenth century Constantine Porphyrogenitus in his book De Administrat one Imper claims the Venetians as his subjects though he admits that they had for peace sake paid tribute to Lepanto and his successors as kings of Italy p 71 I have not read the famous Squittino della libertà Veneta which gave the republic so much offence in the seventeenth century but a very strong case is made out against their early independence in Giannone s history t i p 283 edit Haia 753 Muratori informs us that so late as 1084 the doge obtained the title of Imperatus Protosevastos from the court of Constantinople a title which he continued always to use (Annali d Italia ad ann) But I should lay no stress on this circumstance The Greek like the German emperors in modern times had a moment of specious titles which passed for ready money over Christendom

salem the French and Venetian nations were alone engaged, but the former only as private adventurers the latter with the whole strength of their republic under its doge Henry Dandolo Three eighths of the city of Constantinople and an equal pro portion of the provinces were allotted to them in the partition of the spoil and the doge took the singular but accurate title Duke of three eighths of the Roman empire Their share was increased by purchases from less opulent crusaders especially one of much importance the island of Candia which they re tained till the middle of the seventeenth century These foreign acquisitions were generally granted out in fief to private Vene tian nobles under the supremacy of the republic [a] It was thus that the Ionian islands to adopt the vocabulary of our day came under the dominion of Venice and guaranteed that sovereignty which she now began to affect over the Adriatic Those of the Archipelago were lost in the sixteenth century This political greatness was sustained by an increasing com merce No Christian state preserved so considerable an inter course with the Mohammedans While Genoa kept the keys of the Black Sea by her colonies of Pera and Caffa Venice di rected her vessels to Acre and Alexandria These connections as is the natural effect of trade deadened the sense of religious antipathy and the Venetians were sometimes charged with obstructing all efforts towards a new crusade or even any partial attacks upon the Mohammedan nations

The earliest form of government at Venice as we collect from an epistle of Cassiodorus in the sixth century was by twelve annual tribunes Perhaps the union of the different islanders was merely federative However in 697 they re solved to elect a chief magistrate by name of duke or in their dialect doge of Venice No councils appear to have limited his power or represented the national will The doge was gen eral and judge he was sometimes permitted to associate his son with him and thus to prepare the road for hereditary power his government had all the prerogatives and as far as in such a state of manners was possible the pomp of a mon archy But he acted in important matters with the concurrence of a general assembly though from the want of positive re straints his executive government might be considered as nearly absolute Time however demonstrated to the Vene

[a] Sismondi, t. p. 43

tians the imperfections of such a constitution. Limitations were accordingly imposed on the doge in 1032; he was prohibited from associating a son in the government, and obliged to act with the consent of two elected counsellors, and, on important occasions, to call in some of the principal citizens. No other change appears to have taken place till 1172, long after every other Italian city had provided for its liberty by constitutional laws, more or less successful, but always manifesting a good deal of contrivance and complication. Venice was, however, dissatisfied with her existing institutions. General assemblies were found, in practice, inconvenient and unsatisfactory. Yet some adequate safeguard against a magistrate of indefinite powers was required by freemen A representative council, as in other republics, justly appeared the best innovation that could be introduced [b]

The great council of Venice, as established in 1172, was to consist of four hundred and eighty citizens, equally taken from the six districts of the city, and annually renewed But the election was not made immediately by the people. Two electors, called tribunes, from each of the six districts, appointed the members of the council by separate nomination These tribunes at first were themselves chosen by the people, so that the intervention of this electoral body did not apparently trespass upon the democratical character of the constitution. But the great council, principally composed of men of high birth, and invested by the law with the appointment of the doge, and of all the councils of magistracy, seem, early in the thirteenth century, to have assumed the right of naming their own constituents. Besides appointing the tribunes, they took upon themselves another privilege, that of confirming or rejecting their successors before they resigned their functions These usurpations rendered the annual election almost nugatory; the same members were usually renewed; and though the dignity of councillor was not yet hereditary, it remained, upon the whole, in the same families In this transitional state the Venetian government continued during the thirteenth century; the people actually debarred of power, but an hereditary aristocracy

[b] Sismondi t iii p 287 As I have never read the Storia civile Veneta by Vettor Sandi in nine vols 4to, or even Laugier's History of Venice my reliance has chiefly been placed on M Sismondi, who has made use of Sandi the latest, and probably the most accurate, historian. To avoid frequent reference, the principal passages in Sismondi relative to the domestic revolutions of Venice are t. i p 323, t. iii pp 287-300 t iv pp 349-370. The history of Daru had not been published when this was written

not completely or legally confirmed. The right of electing, or rather of re-electing, the great council was transferred, in 1297, from the tribunes, whose office was abolished, to the council of forty; they ballotted upon the names of the members who already sat; and whoever obtained twelve favoring balls out of forty retained his place. The vacancies occasioned by rejection or death were filled up by a supplemental list formed by three electors nominated in the great council. But they were expressly prohibited, by laws of 1298 and 1300, from inserting the name of any one whose paternal ancestors had not enjoyed the same honor. Thus an exclusive hereditary aristocracy was finally established. And the personal rights of noble descent were rendered complete in 1319 by the abolition of all elective forms By the constitution of Venice as it was then settled, every descendant of a member of the great council, on attaining twenty-five years of age, entered as of right into that body, which, of course, became unlimited in its numbers *c*

But an assembly so numerous as the great council, even before it was thus thrown open to all the nobility, could never have conducted the public affairs with that secrecy and steadiness which were characteristic of Venice; and without an intermediary power between the doge and the patrician multitude the constitution would have gained nothing in stability to compensate for the loss of popular freedom. The great council had proceeded very soon after its institution to limit the ducal prerogatives That of exercising criminal justice, a trust of vast importance, was transferred in 1179 to a council of forty members annually chosen The executive government itself was thought too considerable for the doge without some material limitations Instead of naming his own assistants or pregadi, he was only to preside in a council of sixty members, to whom the care of the state in all domestic and foreign relations, and the previous deliberation upon proposals submitted to the great council, was confided This council of pregadi, generally called in later times the senate, was enlarged in the fourteenth cen-

c These gradual changes between 1297 and 1319 were first made known by Sandi from whom M Sismondi has introduced the facts into his own history I notice this, because all former writers, both ancient and modern fix the complete and final establishment of the Venetian aristocracy in 1297

Twenty five years complete was the statutable age at which every Venetian noble had a right to take his seat in the great council But the names of those who had passed the age of twenty were annually put into an urn and one fifth drawn out by lot, who were thereupon admitted. On an average, therefore the age of admission was about twenty-three Janotus de Rep Venet — Contarini — Amelot de la Houssaye.

tury by sixty additional members, and as a great part of the magistrates had also seats in it, the whole number amounted to between two and three hundred Though the legislative power, properly speaking, remained with the great council, the senate used to impose taxes, and had the exclusive right of making peace and war It was annually renewed, like almost all other councils at Venice, by the great council But since even this body was too numerous for the preliminary discussion of business, six councillors, forming, along with the doge, the signiory, or visible representative of the republic, were empowered to dispatch orders, to correspond with ambassadors, to treat with foreign states, to convoke and preside in the councils, and perform other duties of an administration In part of these they were obliged to act with the concurrence of what was termed the college, comprising, besides themselves, certain select councillors, from different constituted authorities [d]

It might be imagined that a dignity so shorn of its lustre as that of doge would not excite an overweening ambition But the Venetians were still jealous of extinguished power, and while their constitution was yet immature, the great council planned new methods of restricting their chief magistrate An oath was taken by the doge on his election so comprehensive as to embrace every possible check upon undue influence He was bound not to correspond with foreign states, or to open their letters, except in the presence of the signiory, to acquire no property beyond the Venetian dominions, and to resign what he might already possess, to interpose directly or indirectly, in no judicial process, and not to permit any citizen to use tokens of subjection in saluting him As a further security, they devised a remarkably complicated mode of supplying the vacancy of his office Election by open suffrage is always liable to tumult or corruption nor does the method of secret ballot, while it prevents the one afford in practice any adequate security against the other Election by lot incurs the risk of placing incapable persons in situations of arduous trust The Venetian scheme was intended to combine the two modes without their evils by leaving the absolute choice of their doge to

[d] The college of Savj consisted of sixteen persons and t possessed the initative in all public measures that required the assent of the senate For no single senator much less any noble of the great council could propose anything for debate The signiory had the same privilege Thus the virtual powers even of the senate were far more limited than they appear at first sight and no possibility remained of innovation in the fundamental principles of the constitution.

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the prophecies of the former were neglected, and it cannot wholly be affirmed that they were fulfilled Yet Venice is described by a writer thirty years later as somewhat impaired in opulence by her long warfare with the dukes of Milan

The latter had recovered a great part of their dominions as rapidly as they had lost them Giovanni Maria, the elder brother, a monster of guilt even among the Visconti, having been assassinated, Filippo Maria assumed the government of Milan and Pavia, almost his only possessions But though weak and unwarlike himself, he had the good fortune to employ Carmagnola, one of the greatest generals of that military age Most of the revolted cities were tired of their new masters, and, their inclinations conspiring with Carmagnola's eminent talents and activity, the house of Visconti reassumed its former ascendency from the Sessia to the Adige Its fortunes might have been still more prosperous if Filippo Maria had not rashly as well as ungratefully offended Carmagnola That great captain retired to Venice, and inflamed a disposition towards war which the Florentines and the Duke of Savoy had already excited The Venetians had previously gained some important advantages in another quarter, by reducing the country of Friuli, with part of Istria, which had for many centuries depended on the temporal authority of a neighboring prelate, the patriarch of Aquileia They entered into this new alliance [A D 1426] No undertaking of the republic had been more successful Carmagnola led on their armies, and in about two years Venice acquired Brescia and Bergamo, and extended her boundary to the river Adda, which she was destined never to pass

Such conquests could only be made by a city so peculiarly maritime as Venice through the help of mercenary troops But, in employing them, she merely conformed to a fashion which states to whom it was less indispensable had long since established A great revolution had taken place in the system of military service through most parts of Europe, but especially in Italy During the twelfth and thirteenth centuries, whether the Italian cities were engaged in their contest with the em-

1423 were but 945 750 in 1469, notwithstanding her acquisition in the meantime, of Brescia Bergamo Ravenna, and Crema. Id. ii. 462. They increased considerably in the next twenty years. The taxes however were light in the Venetian dominions and Daru conceives the revenues of the republic reduced to a corn price to have not exceeded the value of 11,000,000 francs at the present day p 542.

perors or in less arduous and general hostilities among each other, they seem to have poured out almost their whole population as an armed and loosely organized militia A single city, with its adjacent district, sometimes brought twenty or thirty thousand men into the field Every man, according to the trade he practised, or quarter of the city wherein he dwelt, knew his own banner and the captain he was to obey [m] In battle the carroccio formed one common rallying point, the pivot of every movement This was a chariot, or rather wagon, painted with vermilion, and bearing the city standard elevated upon it That of Milan required four pair of oxen to drag it forward [n] To defend this sacred emblem of his country, which Muratori compares to the ark of the covenant among the Jews, was the constant object, that, giving a sort of concentration and uniformity to the army, supplied in some degree the want of more regular tactics This militia was of course principally composed of infantry At the famous battle of the Arbia, in 1260, the Guelf Florentines had thirty thousand foot and three thousand horse,[o] and the usual proportion was five, six, or ten to one Gentlemen, however, were always mounted, and the superiority of a heavy cavalry must have been prodigiously great over an undisciplined and ill armed populace In the thirteenth and following centuries armies seem to have been considered as formidable nearly in proportion to the number of men at arms or lancers A charge of cavalry was irresistible, battles were continually won by inferior numbers, and vast slaughter was made among the fugitives [p]

As the comparative inefficiency of foot soldiers became evident, a greater proportion of cavalry was employed, and armies, though better equipped and disciplined, were less numerous This we find in the early part of the fourteenth century The main point for a state at war was to obtain a sufficient force of men at arms As few Italian cities could muster a large body of cavalry from their own population, the obvious resource was to hire mercenary troops This had been practised in some instances much earlier The city of Genoa took the Count of

[m] *Muratori* Antiq Ital Diss 26 Denina Rivoluz ons d Ital a, l xii. c 4.

[n] The carrocc o was invented by Eri bert a celebrated arch b shop of M lan about 1039 Annali di Murat. Antiq Ital D ss. 26. The carroccio of M lan was taken by Frederic II n 1237 and sent to Rome. Parma and Cremona lost the r carroccios to each other and exchanged them some years afterwards with great exultation. In the fourteenth century th s custom had gone into dis use —Id. ibid Denina l. xii. c 4.

[o] Villani l vi. c. 79

[p] S smondi t. i i p. 263 &c has some jud cious observations on this subject.

impulse of a lance or the crushing blow of a battle-axe Plate-armor was substituted in its place, and the man at-arms, cased in entire steel, the several pieces firmly riveted, and proof against every stroke, his charger protected on the face, chest, and shoulders, or, as it was called, barded, with plates of steel, fought with a security of success against enemies inferior perhaps only in these adventitious sources of courage to himself [t]

Nor was the new system of conducting hostilities less inconvenient to the citizens than the tactics of a battle Instead of rapid and predatory invasions, terminated instantly by a single action, and not extending more than a few days' march from the soldier's home the more skilful combinations usual in the fourteenth century frequently protracted an indecisive contest for a whole summer [u] As wealth and civilization made evident the advantages of agriculture and mercantile industry, this loss of productive labor could no longer be endured Azzo Visconti, who died in 1339 dispensed with the personal service of his Milanese subjects Another of his laws says Galvaneo Fiamma, 'was that the people should not go to war, but remain at home for their own business For they had hitherto been kept with much danger and expense every year, and especially in time of harvest and vintage, when princes are wont to go to war, in besieging cities and incurred numberless losses, and chiefly on account of the long time that they were so detained [v] This law of Azzo Visconti taken separately, might be ascribed to the usual policy of an absolute government But we find a similar innovation not long afterwards at Florence In the war carried on by that republic against Giovanni Visconti in 1351, the younger Villani informs us that the useless and mischievous personal service of the inhabitants of the district was commuted into a money payment "[w] This change indeed was necessarily accompanied by a vast increase of taxation The Italian states republics as well as principalities levied very heavy contributions Mastino della Scala had a revenue of

[t] The earl est plate armor engraved in Montfaucon s Monumens de la Mon arch e Francaise t is of the re gn of I h l p the Long about 1315 but t does not appear generally t ll that of Ph l p of V alo s or even later Before the complete harness of steel was adopted plated caps were somet mes worn on the knees and elbows, and even greaves on the legs Th s is represented in a statue of Charles I King of Naples who d ed in 1285 Poss bly the statue may not be qu te so anc ent. Montfaucon pass m — Dan el Hist. de la M l ce Française p 395

[u] Th s ted ous warfare *á la Fablus* is called by Villani guerra guereggiata l v t c. 49 at least I can annex no other mean ng to the express on

[v] Muratori Ant qu t. Ital. D ssert. 26.

[w] Matt Villani p 135

and disgrace of Italy Guarnieri, after some time, withdrew his troops, satiated with plunder, into Germany, but he served in the invasion of Naples by Louis, King of Hungary in 1348, and, forming a new company, ravaged the ecclesiastical state A still more formidable band of disciplined robbers appeared in 1353, under the command of Fra Moriale, and afterwards of Conrad Lando This was denominated the Great Company, and consisted of several thousand regular troops, besides a multitude of half armed ruffians, who assisted as spies, pioneers, and plunderers The rich cities of Tuscany and Romagna paid large sums, that the Great Company, which was perpetually in motion, might not march through their territory Florence alone magnanimously resolved not to offer this ignominious tribute Upon two occasions, once in 1358, and still more conspicuously the next year, she refused either to give a passage to the company, or to redeem herself by money, and in each instance the German robbers were compelled to retire. At this time they consisted of five thousand cuirassiers, and their whole body was not less than twenty thousand men, a terrible proof of the evils which an erroneous system had entailed upon Italy Nor were they repulsed on this occasion by the actual exertions of Florence The courage of that republic was in her councils, not in her arms, the resistance made to Lando's demand was a burst of national feeling, and rather against the advice of the leading Florentines,[a] but the army employed was entirely composed of mercenary troops, and probably for the greater part of foreigners

None of the foreign partisans who entered into the service of Italian states acquired such renown in that career as an Englishman whom contemporary writers call Aucud or Agutus, but to whom we may restore his national appellation of Sir John Hawkwood This very eminent man had served in the war of Edward III and obtained his knighthood from that sovereign though originally, if we may trust common fame, bred to the trade of a tailor After the peace of Bretigni, France was ravaged by the disbanded troops, whose devastations Edward was accused perhaps unjustly, of secretly instigating A large body of these, under the name of the White Company, passed into the service of the Marquis of Montferrat They were some time afterwards employed by the Pisans

[a] Matt. Villani, p. 537

against Florence, and during this latter war Hawkwood appears as their commander For thirty years he was continually engaged in the service of the Visconti, of the pope, or of the Florentines, to whom he devoted himself for the latter part of his life with more fidelity and steadiness than he had shown in his first campaigns The republic testified her gratitude by a public funeral, and by a monument in the Duomo, which still perpetuates his memory

The name of Sir John Hawkwood is worthy to be remembered as that of the first distinguished commander who had appeared in Europe since the destruction of the Roman empire It would be absurd to suppose that any of the constituent elements of military genius which nature furnishes to energetic characters were wanting to the leaders of a barbarian or feudal army untroubled perspicacity in confusion, firm decision, rapid execution, providence against attack, fertility of resource and stratagem—these are in quality as much required from the chief of an Indian tribe as from the accomplished commander But we do not find them in any instance so consummated by habitual skill as to challenge the name of generalship No one at least occurs to me, previously to the middle of the fourteenth century, to whom history has unequivocally assigned that character It is very rarely that we find even the order of battle specially noticed The monks, indeed, our only chroniclers, were poor judges of martial excellence, yet as war is the main topic of all annals, we could hardly remain ignorant of any distinguished skill in its operations This neglect of military science certainly did not proceed from any predilection for the arts of peace It arose out of the general manners of society, and out of the nature and composition of armies in the middle ages The insubordinate spirit of feudal tenants and the emulous quality of chivalry, were alike hostile to that gradation of rank that punctual observance of irksome duties, that prompt obedience to a supreme command through which a single soul is infused into the active mass and the rays of individual merit converge to the head of the general

In the fourteenth century we begin to conceive something of a more scientific character in military proceedings and historians for the first time discover that success does not entirely depend upon intrepidity and physical prowess The victory of Muhldorf over the Austrian princes in 1322, that decided a civil

of Barbiano, were Jacopo del Verme, Facino Cane, and Ottobon Terzo Among an intelligent and educated people, little inclined to servile imitation, the military art made great progress The most eminent condottieri being divided, in general, between belligerents, each of them had his genius excited and kept in tension by that of a rival in glory Every resource of science as well as experience, every improvement in tactical arrangements, and the use of arms, were required to obtain an advantage over such equal enemies In the first year of the fifteenth century the Italians brought their newly acquired superiority to a test The Emperor Robert, in alliance with Florence, invaded Gian Galeazzo's dominions with a considerable army From old reputation, which so frequently survives the intrinsic qualities upon which it was founded, an impression appears to have been excited in Italy that the native troops were still unequal to meet the charge of German cuirassiers The Duke of Milan gave orders to his general, Jacopo del Verme, to avoid a combat But that able leader was aware of a great relative change in the two armies The Germans had neglected to improve their discipline, their arms were less easily wielded, their horses less obedient to the bit A single skirmish was enough to open their eyes, they found themselves decidedly inferior, and having engaged in the war with the expectation of easy success were readily disheartened [b] This victory, or rather this decisive proof that victory might be achieved set Italy at rest for almost a century from any apprehensions on the side of her ancient masters

Whatever evils might be derived, and they were not trifling, from the employment of foreign or native mercenaries, it was impossible to discontinue the system without general consent, and too many states found their own advantage in it for such an agreement The condottieri were indeed all notorious for contempt of engagements Their rapacity was equal to their bad faith Besides an enormous pay, for every private cuirassier received much more in value than a subaltern officer at present, they exacted gratifications for every success [c] But everything

[b] Sismondi t viii. p 439

[c] Paga doppia e mese compiuto of which we frequently read sometimes granted improvidently, and more often demanded unreasonably The first speaks for itself the second was the reckoning a month's service as completed when it was begun in calculating their pay —Matt Villan p 62 Sismond t v p 412

Gian Galleazo Visconti promised constant half pay to the condottier whom he disbanded in 1396. This, perhaps is the first instance of half pay — Sismond t vi p 379.

dence As the great security for established governments, the surest preservation against popular tumult it assumes a more equivocal character, depending upon the solution of a doubtful problem, whether the sum of general happiness has lost more in the last three centuries through arbitrary power, than it has gained through regular police and suppression of disorder

There seems little reason to doubt that gunpowder was introduced through the means of the Saracens into Europe Its use in engines of war, though they may seem to have been rather like our fireworks than artillery, is mentioned by an Arabic writer in the Escurial collection about the year 1249 [l] It was known not long afterwards to our philosopher Roger Bacon though he concealed, in some degree, the secret of its composition In the first part of the fourteenth century cannon, or rather mortars, were invented, and the applicability of gunpowder to purposes of war was understood Edward III employed some pieces of artillery with considerable effect at Crecy [m] But its use was still not very frequent, a circumstance which will surprise us less when we consider the unscientific construction of artillery, the slowness with which it could be loaded, its stone balls, of uncertain aim and imperfect force, being commonly fired at a considerable elevation, and especially the difficulty of removing it from place to place during an action In sieges, and in naval engagements as, for example, in the war of Chioggia, it was more frequently employed [n] Gradually, however, the new artifice of evil gained

[l] Casiri Bibl Arab Hispan t i p 7, thus renders the original description of certain missiles used by the Moors Serpunt susurrantque scorpiones et cumligati ac pulvere nitrato incensi inde explosi fulgurant ac incendunt. Jam videre erat manganum excussum veluti nubem per aera extendi ac tonitrus instar horrendum edere fragorem ignemque undequaque vomens omnia dirumpere incendere in cineres redigere The Arabic passage is at the bottom of the page and one would be glad to know whether *pulvis nitratus* is a fair translation But I think there can on the whole be no doubt that gunpowder is meant Another Arabian writer seems to describe the use of cannon in the years 1312 and 1323 Id ii 1 And the chronicle of Alphonso XI king of Castile distinctly mentions them at the siege of Algeciras in 1342 But before this they were sufficiently known in France Gunpowder and cannon are both mentioned in registers of accounts under 1338 (Du Cange v Bombarda) and in another document of 1345. Hist du Languedoc t iv p 204 But the strongest evidence is a passage of Petrarch written before 1344 and quoted in Muratori, Antich Ital. Dissert 26, p 456, where he speaks of the artem nuper rara nunc communia.

[m] Cf Villani l xi c 67 Gibbon has thrown out a sort of objection to the certainty of this fact on account of Froissart's silence But the positive testimony of Villani who died within two years afterwards and had manifestly obtained much information as to the great events passing in France cannot be rejected He ascribes a material effect to the cannon of Edward colpi delle bombarde which I suspect from his strong expressions had not been employed before except against stone walls. It seemed he says, as if God thundered con grandi ucciolone di gentile sfondamento e cavali

[n] Gattaro Ist Padovana, in Script Rer Ital t xvii p 360. Several proofs of the employment of artillery in French sieges during the reign of Charles V occur in Varet See the word Artillerie in the Index

(Gian Cavazzo had, according to

ground. The French made the principal improvements. They cast their cannon smaller, placed them on lighter carriages, and used balls of iron.[o] They invented portable arms for a single soldier, which, though clumsy in comparison with their present state, gave an augury of a prodigious revolution in the military art. John, Duke of Burgundy, in 1411, had 4,000 hand-cannons, as they were called, in his army.[p] They are found under different names and modifications of form—for which I refer the reader to professed writers on tactics—in most of the wars that historians of the fifteenth century record, but less in Italy than beyond the Alps. The Milanese, in 1449, are said to have armed their militia with 20,000 muskets, which struck terror into the old generals.[q] But these muskets, supported on a rest, and charged with great delay, did less execution than our sanguinary science would require; and, uncombined with the admirable invention of the bayonet, could not in any degree resist a charge of cavalry. The pike had a greater tendency to subvert the military system of the middle ages, and to demonstrate the efficiency of disciplined infantry. Two free nations had already discomfited, by the help of such infantry, those arrogant knights on whom the fate of battles had depended—the Bohemians, instructed in the art of war by their great master, John Zisca; and the Swiss, who, after winning their independence inch by inch from the house of Austria, had lately established their renown by a splendid victory over Charles of Burgundy. Louis XI. took a body of mercenaries from the United Cantons into pay. Maximilian had recourse to the same assistance.[r] And though the importance of infantry was not perhaps decidedly established till the Milanese wars of Louis XII. and Francis I., in the sixteenth century, yet the last years of the middle ages, according to our division, indicated the commencement of that military revolution in the general employment of pikemen and musketeers.

Soon after the beginning of the fifteenth century, to return

which he readily obtained money, and to the King of Aragon, who employed that money in fitting out an armament, that hovered upon the coast of Africa, under pretext of attacking the Moors It is, however, difficult at this time to distinguish the effects of preconcerted conspiracy from those of casual resentment Before the intrigues so skilfully conducted had taken effect, yet after they were ripe for development, an outrage committed upon a lady at Palermo, during a procession on the vigil of Easter, provoked the people to that terrible massacre of all the French in their island which has obtained the name of Sicilian Vespers [A D 1283] Unpremeditated as such an ebullition of popular fury must appear, it fell in by the happiest coincidence, with the previous conspiracy The King of Aragon's fleet was at hand, the Sicilians soon called in his assistance, he sailed to Palermo, and accepted the crown John of Procida is a remarkable witness to the truth which the pride of governments will seldom permit them to acknowledge that an individual obscure and apparently insignificant, may sometimes, by perseverance and energy, shake the foundations of established states, while the perfect concealment of his intrigues proves also, against a popular maxim, that a political secret may be preserved by a number of persons during a considerable length of time s

The long war that ensued upon this revolution involved or interested the greater part of civilized Europe Philip III of France adhered to his uncle, and the King of Aragon was compelled to fight for Sicily within his native dominions This indeed was the most vulnerable point of attack Upon the sea he was lord of the ascendant His Catalans, the most intrepid of Mediterranean sailors, were led to victory by a Calabrian refugee, Roger di Loria, the most illustrious and successful admiral whom Europe produced till the age of Blake and de Ruyter In one of Loria's battles the eldest son of the King of

s Giannone though he has well described the schemes of John of Procida yet as too often his custom or rather that of Costanzo whom he implicitly follows drops or slides over leading facts and thus, omitting entirely or misrepresenting the circumstances of the Sicilian Vespers, treats the whole insurrection as the result of a deliberate conspiracy On the other hand, Nicolas Specialis, a contemporary writer in the seventh volume of Muratori's collection represents the Sicilian Vespers as proceeding entirely from the casual outrage in the streets of Palermo. The thought of calling in Peter he asserts, did not occur to the Sicilians till Charles had actually commenced the siege of Messina. But this is equally removed from the truth Gibbon has made more errors than are usual with so accurate an historian in his account of this revolution such as calling Constance the queen of Peter, sister instead of daughter of Manfred A good narrative of the Sicilian Vespers may be found in Velly's History of France t vi.

Naples was made prisoner, and the first years of his own reign were spent in confinement But notwithstanding these advantages, it was found impracticable for Aragon to contend against the arms of France, and latterly of Castile, sustained by the rolling thunders of the Vatican Peter III had bequeathed Sicily to his second son James, Alfonso, the eldest, King of Aragon, could not fairly be expected to ruin his inheritance for his brother's cause, nor were the barons of that free country disposed to carry on a war without national objects He made peace, accordingly, in 1295, and engaged to withdraw all his subjects from the Sicilian service Upon his own death, which followed very soon, James succeeded to the kingdom of Aragon, and ratified the renunciation of Sicily But the natives of that island had received too deeply the spirit of independence to be thus assigned over by the letter of a treaty After solemnly abjuring by their ambassadors, their allegiance to the King of Aragon, they placed the crown upon the head of his brother Frederic They maintained the war against Charles II of Naples, against James of Aragon, their former king, who had bound himself to enforce their submission, and even against the great Roger di Loria, who, upon some discontent with Frederic, deserted their banner, and entered into the Neapolitan service Peace was at length made in 1300, upon condition that Frederic should retain during his life the kingdom, which was afterwards to revert to the crown of Naples a condition not likely to be fulfilled

Upon the death of Charles II, King of Naples in 1305, a question arose as to the succession His eldest son Charles Martel, had been called by maternal inheritance to the throne of Hungary, and had left at his decease, a son, Carobert, the reigning sovereign of that country According to the laws of representative succession which were at this time tolerably settled in private inheritance the crown of Naples ought to have regularly devolved upon that prince But it was contested by his uncle Robert the eldest living son of Charles II, and the cause was pleaded by civilians at Avignon before Pope Clement V, the feudal superior of the Neapolitan kingdom Reasons of public utility, rather than of legal analogy seem to have prevailed in the decision which was made in favor of Robert † The course of his reign evinced the wisdom of this

† Cannone l xx Summonte t ii p 370. Some of the civilians of that age however approved the decision

determination Robert, a wise and active, though not personally a martial prince, maintained the ascendency of the Guelf faction, and the papal influence connected with it, against the formidable combination of Ghibelin usurpers in Lombardy, and the two emperors Henry VII and Louis of Bavaria No male issue survived Robert, whose crown descended to his granddaughter Joanna She had been espoused, while a child, to her cousin Andrew, son of Carobert, King of Hungary, who was educated with her in the court of Naples Auspiciously contrived as this union might seem to silence a subsisting claim upon the kingdom, it proved eventually the source of a civil war and calamity for a hundred and fifty years Andrew's manners were barbarous, more worthy of his native country than of that polished court wherein he had been bred He gave himself up to the society of Hungarians, who taught him to believe that a matrimonial crown and derivative royalty were derogatory to a prince who claimed by a paramount hereditary right In fact, he was pressing the court of Avignon to permit his own coronation, which would have placed in a very hazardous condition the rights of the queen, with whom he was living on ill terms, when one night he was seized, strangled, and thrown out of a window [A D 1343] Public rumor, in the absence of notorious proof, imputed the guilt of this mysterious assassination to Joanna Whether historians are authorized to assume her participation in it so confidently as they have generally done may perhaps be doubted, though I cannot venture positively to rescind their sentence The circumstances of Andrew s death were undoubtedly pregnant with strong suspicions [u] Louis King of Hungary, his brother, a just and stern prince, invaded Naples partly as an avenger,

[u] The Chron cle of Dominic d Gra vina (Scr pt. Rer Ital t x) seems to be our best testimony for the circum stances connected w th Andrew s death and after read ng h s narrat ve more than once, I find myse f undec ded as to th s perplexed and myster ous story Gravina s op nion it should be observed s extremely host le to the queen. Nevertheless there are not want ing pres mpt ons that Charles, first Duke of Durazzo who had marr ed the s ster of Andrew was concerned n h s mur ler for which n fact he was afterwards put to death by the K ng of Hun gary But f the Duke of Durazzo was guilty it s unl kely that Joanna should be so too beca se she was on very bad terms w th him and indeed the ch ef proofs aga nst her are founded on the invest gation which Durazzo h mself professed to inst tute. Confess ons obta ned t l rough torture are as l ttle cred ble in h story as they ought to be in jud cature even if we could be pos t vely sure wh ch s not the case in th s instance that such confess ons were ever made However, I do not pretend to acqu t Joanna but merely to not ce the uncerta nty that rests over her story, on account of the positiveness w th wh ch all historians except those of Naples and the Abbé de Sade whose v nd cat on (Vie de Pétrarque t iii. notes) does her more harm than good have assumed the murder of Andrew to have been l er own act as if she had ordered h s execution in open day

partly as a conqueror The queen and her second husband, Louis of Tarento, fled to Provence, where her acquittal, after a solemn, if not an impartial, investigation, was pronounced by Clement VI Louis, meanwhile, found it more difficult to retain than to acquire the kingdom of Naples; his own dominion required his presence, and Joanna soon recovered her crown She reigned for thirty years more without the attack of any enemy, but not intermeddling, like her progenitors, in the general concerns of Italy Childless by four husbands, the succession of Joanna began to excite ambitious speculations Of all the male descendants of Charles I none remained but the King of Hungary, and Charles Duke of Durazzo, who had married the queen's niece, and was regarded by her as the presumptive heir to the crown But offended by her marriage with Otho of Brunswick, he procured the assistance of an Hungarian army to invade the kingdom, and, getting the queen into his power, took possession of the throne In this enterprise he was seconded by Urban VI, against whom Joanna had unfortunately declared in the great schism of the church She was smothered with a pillow, in prison, by the order of Charles [A D 1378] The name of Joan of Naples has suffered by the lax repetition of calumnies Whatever share she may have had in her husband's death, and certainly under circumstances of extenuation, her subsequent life was not open to any flagrant reproach The charge of dissolute manners, so frequently made, is not warranted by any specific proof or contemporary testimony

In the extremity of Joanna's distress she had sought assistance from a quarter too remote to afford it in time for her relief She adopted Louis Duke of Anjou, eldest uncle of the young King of France, Charles VI, as her heir in the kingdom of Naples and county of Provence This bequest took effect without difficulty in the latter country Naples was entirely in possession of Charles of Durazzo Louis, however, entered Italy with a very large army, consisting at least of 30,000 cavalry, and, according to some writers, more than double that number [v] He was joined by many Neapolitan barons attached to the late queen But, by a fate not unusual in so imperfect a state of military science, this armament produced no adequate effect, and mouldered away through disease and want of pro-

[v] Muratori Summonte Costanzo

visions Louis himself dying not long afterwards the government of Charles III appeared secure, and he was tempted to accept an offer of the crown of Hungary This enterprise, equally unjust and injudicious, terminated in his assassination Ladislaus, his son, a child ten years old, succeeded to the throne of Naples under the guardianship of his mother Margaret, whose exactions of money producing discontent the party which had supported the late Duke of Anjou became powerful enough to call in his son Louis II , as he was called reigned at Naples and possessed most part of the kingdom, for several years, the young King Ladislaus, who retained some of the northern provinces, fixing his residence at Gaeta If Louis had prosecuted the war with activity, it seems probable that he would have subdued his adversary But his character was not very energetic , and Ladislaus, as he advanced to manhood, displaying much superior qualities gained ground by degrees, till the Angevin barons, perceiving the turn of the tide came over to his banner, and he recovered his whole dominions

The kingdom of Naples at the close of the fourteenth century, was still altogether a feudal government This had been introduced by the first Norman kings, and the system had rather been strengthened than impaired under the Angevin line The princes of the blood who were at one time numerous, obtained extensive domains by way of appanage The principality of Tarento was a large portion of the kingdom [w] The rest was occupied by some great families, whose strength, as well as pride was shown in the number of men at arms whom they could muster under their banner At the coronation of Louis II in 1390 the Sanseverini appeared with 1 800 cavalry completely equipped [x] This illustrious house, which had filled all the high offices of state and changed kings at its pleasure was crushed by Ladislaus whose bold and unrelenting spirit well fitted him to bruise the heads of the aristocratic hydra After thoroughly establishing his government at home this ambitious monarch directed his powerful resources towards foreign conquests The ecclesiastical territories had never been secure from rebellion or usurpation , but legitimate sovereigns had hitherto respected the patrimony of the head of the church

[w] It comprehended the provinces now called Terra d Otranto and Terra di Lavoro besides part of those adjoining Summonte, Istoria di Napoli t i i. p. 517 Orsini Prince of Tarento who died in 1463. had 4 000 troops in arms and the value of 1,000,000 florins in movables Sismondi t. x p 151

[x] Summonte t. i i. p. 517 Giannone l. xxiv c. 4

It was reserved for Ladislaus, a feudal vassal of the Holy See, to seize upon Rome itself as his spoil For several years, while the disordered state of the church, in consequence of the schism and the means taken to extinguish it, gave him an opportunity, the King of Naples occupied great part of the papal territories He was disposed to have carried his arms farther north, and attacked the republic of Florence, if not the states of Lombardy, when his death relieved Italy from the danger of this new tyranny

An elder sister, Joanna II , reigned at Naples after Ladislaus Under this queen, destitute of courage and understanding, and the slave of appetites which her age rendered doubly disgraceful, the kingdom relapsed into that state of anarchy from which its late sovereign had rescued it I shall only refer the reader to more enlarged histories for the first years of Joanna's reign In 1421 the two most powerful individuals were Sforza Attendolo, great constable, and Ser Gianni Caraccioli, the queen's minion, who governed the palace with unlimited sway Sforza, aware that the favorite was contriving his ruin, and remembering the prison in which he had lain more than once since the accession of Joanna, determined to anticipate his enemies by calling in a pretender to the crown, another Louis of Anjou, third in descent of that unsuccessful dynasty The Angevin party, though proscribed and oppressed, was not extinct, and the populace of Naples in particular had always been on that side Caraccioli's influence and the queen's dishonorable weakness rendered the nobility disaffected Louis III , therefore, had no remote prospect of success But Caraccioli was more prudent than favorites, selected from such motives, have usually proved Joanna was old and childless, the reversion to her dominions was a valuable object to any prince in Europe None was so competent to assist her or so likely to be influenced by the hope of succession as Alfonso King of Aragon and Sicily That island after the reign of its deliverer, Frederic I had unfortunately devolved upon weak or infant princes One great family, the Chiaramonti, had possessed itself of half Sicily not by a feudal title, as in other kingdoms, but as a kind of counter-sovereignty, in opposition to the crown though affecting rather to bear arms against the advisers of their kings than against themselves The marriage of Maria, Queen of Sicily, with Martin, son of the King of Aragon put an end to

the national independence of her country. Dying without issue, she left the crown to her husband This was consonant, perhaps, to the received law of some European kingdoms But, upon the death of Martin, in 1409, his father, also named Martin, King of Aragon, took possession as heir to his son, without any election by the Sicilian parliament. The Chiaramonti had been destroyed by the younger Martin, and no party remained to make opposition Thus was Sicily united to the crown of Aragon Alfonso, who now enjoyed those two crowns, gladly embraced the proposals of the Queen of Naples They were founded, indeed, upon the most substantial basis, mutual interest She adopted Alfonso as her son and successor, while he bound himself to employ his forces in delivering a kingdom that was to become his own Louis of Anjou, though acknowledged in several provinces, was chiefly to depend upon the army of Sforza, and an army of Italian mercenaries could only be kept by means which he was not able to apply The King of Aragon, therefore, had far the better prospects in the war, when one of the many revolutions of this reign defeated his immediate expectations Whether it were that Alfonso's noble and affable nature afforded a contrast which Joanna was afraid of exhibiting to the people, or that he had really formed a plan to anticipate his succession to the throne, she became more and more distrustful of her adopted son, till, an open rupture having taken place, she entered into a treaty with her hereditary competitor, Louis of Anjou, and, revoking the adoption of Alfonso, substituted the French prince in his room The King of Aragon was disappointed by this unforeseen stroke, which, uniting the Angevin faction with that of the reigning family, made it impracticable for him to maintain his ground for any length of time in the kingdom Joanna reigned for more than ten years without experiencing any inquietude from the pacific spirit of Louis, who, content with his reversionary hopes, lived as a sort of exile in Calabria [y] Upon

[y] Joanna's great favorite Caraccioli fell a victim some time before his mistress's death to an intrigue of the palace, the Duchess of Sessia a new favorite having prevailed on the feeble old queen to permit him to be assassinated About this time Alfonso had every reason to hope for the renewal of the settlement in his favor Caraccioli had himself opened a negotiation with the King of Aragon and after his death the Duchess of Sessia embarked in the same cause Joan even revoked secretly the adoption of the Duke of Anjou This circumstance might appear doubtful but the historian to whom I refer has published the act of revocation itself which bears date April 11th 1433 Zurita (Annales de Aragon t iv p 217) admits that no other writer, either contemporary or subsequent has mentioned any part of the transaction which must have been kept very secret, but his authority is so respectable that

Alfonso, surnamed the Magnanimous, was by far the most accomplished sovereign whom the fifteenth century produced. The virtues of chivalry were combined in him with the patronage of letters, and with more than their patronage, a real enthusiasm for learning, seldom found in a king, and especially in one so active and ambitious.[c] This devotion to literature was, among the Italians of that age, almost as sure a passport to general admiration as his more chivalrous perfection. Magnificence in architecture and the pageantry of a splendid court gave fresh lustre to his reign. The Neapolitans perceived with grateful pride that he lived almost entirely among them, in preference to his patrimonial kingdom, and forgave the heavy taxes which faults nearly allied to his virtues, profuseness and ambition, compelled him to impose.[d] But they remarked a very different character in his son. Ferdinand was as dark and vindictive as his father was affable and generous. The barons, who had many opportunities of ascertaining his disposition, began, immediately upon Alfonso's death, to cabal against his succession, turning their eyes first to the legitimate branch of the family, and, on finding that prospect not favorable, to John, titular Duke of Calabria, son of Regnier of Anjou, who survived to protest against the revolution that had dethroned him. [A.D. 1461.] John was easily prevailed upon to undertake an invasion of Naples. Notwithstanding the treaty concluded in 1455, Florence assisted him with money, and Venice at least with her wishes; but Sforza remained unshaken in that alliance with Ferdinand which his clear-sighted policy discerned to be the best safeguard for his own dynasty. A large proportion of the Neapolitan nobility, including Orsini, Prince of Tarento, the most powerful vassal of the crown, raised the banner of Anjou, which was sustained also by the youngest Piccinino, the last of the great condottieri, under whose command the veterans of former warfare rejoiced to serve. But John underwent the fate that had always attended his family in their long competition for that throne. After some brilliant successes, his want of resources, aggravated by the defection of Genoa, on whose ancient enmity to the house of Aragon he had relied, was perceived by the barons of his party, who, ac-

c A story is told, true or false, that his delight in hearing Quintus Curtius read without any other medicine, cured the king of an illness. See other proofs of his love of letters in Tiraboschi, t. vi. p. 40.

d Giannone, l. xxvi.

azzo Visconti But the two republics were no longer disposed towards war Florence had spent a great deal without any advantage in her contest with Filippo Maria;[a] and the new Duke of Milan had been the constant personal friend of Cosmo de' Medici, who altogether influenced that republic At Venice, indeed, he had been regarded with very different sentiments, the senate had prolonged their war against Milan with redoubled animosity after his elevation, deeming him a not less ambitious and formidable neighbor than the Visconti But they were deceived in the character of Sforza Conscious that he had reached an eminence beyond his early hopes he had no care but to secure for his family the possession of Milan, without disturbing the balance of Lombardy No one better knew than Sforza the faithless temper and destructive politics of the condottieri, whose interest was placed in the oscillations of interminable war, and whose defection might shake the stability of any government Without peace it was impossible to break that ruinous system, and accustom states to rely upon their natural resources Venice had little reason to expect further conquests in Lombardy, and if her ambition had aspired the hope of them, she was summoned by a stronger call that of self preservation, to defend her numerous and dispersed possessions in the Levant against the arms of Mahomet II All Italy, indeed, felt the peril that impended from that side, and these various motions occasioned a quadruple league in 1455, between the King of Naples, the Duke of Milan, and the two republics, for the preservation of peace in Italy One object of this alliance, and the prevailing object with Alfonso was the implied guarantee of his succession in the kingdom of Naples to his illegitimate son Ferdinand He had no lawful issue, and there seemed no reason why an acquisition of his own valor should pass against his will to collateral heirs The pope, as feudal superior of the kingdom, and the Neapolitan parliament, the sole competent tribunal, confirmed the inheritance of Ferdinand[b] Whatever may be thought of the claims subsisting in the house of Anjou, there can be no question that the reigning family of Aragon were legitimately excluded from the throne of Naples though force and treachery enabled them ultimately to obtain it

[a] The war end ng with the peace of Ferrara, in 1428 is sa d to have cost the republ c of Florence 3 500 000 florins. Amm rato p 1043

[b] G annone L xxvi. c 2

assembled a parliament, and established what was technically called at Florence a balia.[f] This was a temporary delegation of sovereignty to a number, generally a considerable number, of citizens, who during the period of their dictatorship named the magistrates, instead of drawing them by lot, and banished suspected individuals A precedent so dangerous was eventually fatal to themselves and to the freedom of their country. Besides this temporary balia, the regular scrutinies periodically made in order to replenish the bags out of which the names of all magistrates were drawn by lot, according to the constitution established in 1328, were so managed as to exclude all persons disaffected to the dominant faction. But, for still greater security, a council of two hundred was formed in 1411, out of those alone who had enjoyed some of the higher offices within the last thirty years, the period of the aristocratical ascendency, through which every proposition was to pass before it could be submitted to the two legislative councils.[g] These precautions indicate a government conscious of public enmity; and if the Albizi had continued to sway the republic of Florence, their jealousy of the people would have suggested still more innovations, till the constitution had acquired, in legal form as well as substance, an absolutely aristocratical character.

But, while crushing with deliberate severity their avowed adversaries, the ruling party had left one family whose prudence gave no reasonable excuse for persecuting them, and whose popularity as well as wealth rendered the experiment hazardous The Medici were among the most considerable of the new or plebeian nobility From the first years of the fourteenth century their name not very unfrequently occurs in the domestic and military annals of Florence.[h] Salvestro de' Medici, who had been partially implicated in the democratical revolution that lasted from 1378 to 1382, escaped proscription on the revival of the Guelf party, though some of his family were afterwards banished Throughout the long depression of the popular faction the house of Medici was always regarded as their consolation and their hope That house was now represented by Giovanni,[i] whose immense wealth, honorably

[f] Ammirato p 840

[g] Ib p 961

[h] The Medici are enumerated by Villani among the chiefs of the Black faction in 1304, l viii c 71. One of that family was beheaded by order of the Duke of Athens in 1343 l xii c 2 It is singular that Mr Roscoe should refer their first appearance in history, as he seems to do, to the siege of Scarperia in 1351

[i] Giovanni was not nearly related to Salvestro de' Medici Their families are said per lungo tratto allontanarsi

acquired by commercial dealings, which had already rendered the name celebrated in Europe, was expended with liberality and magnificence. Of a mild temper, and averse to cabals, Giovanni de Medici did not attempt to set up a party, and contented himself with repressing some fresh encroachments on the popular part of the constitution which the Albizi were disposed to make.[j] They, in their turn, freely admitted him to that share in public councils to which he was entitled by his eminence and virtues, a proof that the spirit of their administration was not illiberally exclusive. But, on the death of Giovanni his son Cosmo de' Medici, inheriting his father's riches and estimation with more talents and more ambition thought it time to avail himself of the popularity belonging to his name. By extensive connections with the most eminent men in Italy, especially with Sforza he came to be considered as the first citizen of Florence. The oligarchy were more than ever unpopular. Their administration since 1382 had indeed been in general eminently successful, the acquisition of Pisa and of other Tuscan cities had aggrandized the republic, while from the port of Leghorn her ships had begun to trade with Alexandria and sometimes to contend with the Genoese.[k] But an unprosperous war with Lucca diminished a reputation which was never sustained by public affection. Cosmo and his friends aggravated the errors of the government which having lost its wise and temperate leader Nicola di Uzzano had fallen into the rasher hands of Rinaldo degl' Albizi. He incurred the blame of being the first aggressor in a struggle which had become inevitable. Cosmo was arrested by command of a gonfalonier devoted to the Albizi and condemned to banishment. [A.D. 1433.] But the oligarchy had done too much or too little. The city was full of his friends; the honors conferred upon him in his exile attested the sentiments of Italy. Next year he was

Ammirato, p. 992. Nevertheless his being drawn gonfalonier in 14- created a great sensation in the city, and prepared the way to the subsequent revolution. Ibid. Machiavel, l. v.

[j] Machiavel. Istoria Fiorent. l. v.

[k] The Florentines sent their first merchant-ship to Alexandria in 1422, with great and anxious hopes. Prayers were ordered for the success of the republic by sea, and an embassy despatched with presents to conciliate the Sultan of Babylon, that is of Grand Cairo. Ammirato, p. 99. Florence had never before been so wealthy. The circulating money was reckoned (perhaps extravagantly) at 4,000,000 florins. The manufactures of silk and cloth of gold had never flourished so much. Architecture shone under Brunellesch. Literature under Leonard Aretin and Filefo, p. 977. There is some truth in M. Sismondi's remark, that the Medici have derived part of their glory from their predecessors in government whom they subverted, and whom they have rendered obscure. But the Milanese war breaking out in 14-3, tended a good deal to impoverish the city.

that which he acquired in the history of letters Equally active and sagacious, he held his way through the varying combination of Italian policy, always with credit, and generally with success Florence, if not enriched, was upon the whole aggrandized during his administration, which was exposed to some severe storms from the unscrupulous adversaries, Sixtus IV and Ferdinand of Naples, whom he was compelled to resist As a patriot indeed we never can bestow upon Lorenzo de Medici the meed of disinterested virtue He completed that subversion of the Florentine republic which his two immediate ancestors had so well prepared The two councils her regular legislature he superseded by a permanent senate of seventy persons *m* while the gonfalonier and priors, become a mockery and pageant to keep up the illusion of liberty, were taught that in exercising a legitimate authority without the sanction of their prince, a name now first heard at Florence, they incurred the risk of punishment for their audacity *n* Even the total dilapidation of his commercial wealth was repaired at the cost of the state, and the republic disgracefully screened the bankruptcy of the Medici by her own *o* But compared with the statesmen of his age, we can reproach Lorenzo with no heinous crime He had many enemies, his descendants had many

m Amm rato, p 145 Machiavell says (l v) that th s was done r str ngere il governo e che le del beraz on impor tant s riducessero n m nore numero But though t rather appears from Am m rato s express ons that the two coun c ls were now abol shed yet from M S smond, t x p 86 who quotes an au hor I have not seen and from Nard p 7 I should nfer that they st l for mal y subs sted

n Camb a gonfalon er of just ce had, in concert w h the pr ors admon shed some publ c officers for a breach of duty Fu g ud cato questo atto molto superbo says Amm rato che senza par t c paz one d Lorenzo de Med c pr n c pe del governo fosse segu to che n P sa n quel tempo s r trovava p 84 The gonfalon er was fined for execut ing h s const tu onal funct ons Th s was a downr ght confess on that the republ c was at an end and all t provokes M S smond to say s not too mucl t x p 345

o S nce the Med c took on them selves the character of pr nces they had forgotten how to be merchants But mprudently enough they had not d s cont nued the r commerce wh ch was of course m smanaged by agents whom they d d not overlook The consequence was the comple e d lap dat on of the r vast fortune The publ c revenues had been for some years appl ed to make up its defic enc es But from the measures adopted by the republ c if we may st ll use that name she should appear to have cons dered herself rather than Lorenzo as the debtor The interest of the publ c debt was d m nished one half Many char table foundat ons were suppressed The c rcu at ng specie was taken at one fifth be ow its nom nal value n payment of taxes wh le the government cont nued to ssue t at its former rate Thus was Lorenzo re m bursed a part of h s loss at the expense of all h s fellow c t zens S smond t x p 347 It s sl ghtly alluded to by Mach avelli

The vast expend ture of the Med c for the sake of po t cal nfluence would of t self have absorbed all the r profits Cosmo is sa d by Gu cc ard ni to have spent 400,000 ducats n bu ld ng churches monasteries and other public works I f p 91 The expenses of the fam y between 1434 and 1471 in bu ld ngs charit es and taxes a one amount ed to 663 755 flor ns equal n value ac cord ng to S smond to 3 000,000 francs at present H st des Républ t x p 173 They seem to have advanced moneys mprudently, through the r agents to Edward IV , who was not the best of debtors Com nes Mém. de Charles VIII l v c. 6.

more, but no unequivocal charge of treachery or assassination has been substantiated against his memory By the side of Galeazzo or Ludovico Sforza of Ferdinand or his son Alfonso of Naples, of the pope Sixtus IV he shines with unspotted lustre So much was Lorenzo esteemed by his contemporaries that his premature death [A D 1492] has frequently been considered as the cause of those unhappy revolutions that speedily ensued and which his foresight would it was imagined have been able to prevent an opinion which whether founded in probability or otherwise attests the common sentiment about his character

If indeed Lorenzo de Medici could not have changed the destinies of Italy however premature his death may appear if we consider the ordinary duration of human existence it must be admitted that for his own welfare perhaps for his glory he had lived out the full measure of his time An age of new and uncommon revolutions was about to arise among the earliest of which the temporary downfall of his family was to be reckoned The long contested succession of Naples was again to involve Italy in war The ambition of strangers was once more to desolate her plains Ferdinand King of Naples had reigned for thirty years after the discomfiture of his competitor with success and ability but with a degree of ill faith as well as tyranny towards his subjects that rendered his government deservedly odious His son Alfonso whose succession seemed now near at hand was still more marked by these vices than himself[p] Meanwhile the pretensions of the house of Anjou had legally descended after the death of old Regnier to Regnier Duke of Lorraine his grandson by a daughter whose marriage into the house of Lorraine had however so displeased her father that he bequeathed his Neapolitan title along with his real patrimony the county of Provence to a count of Maine by whose testament they became vested in the crown of France Louis XI while he took possession of Provence gave himself no trouble about Naples But Charles VIII inheriting his father s ambition without that cool sagacity which restrained it in general from impracticable attempts and far better circumstanced at home than Louis had ever been was ripe for an expedition to vindicate his pretensions

[p] Comines who speaks sufficiently ill of the father sums up the son s character very concisely Nul homme n a este plus cruel que lui ne plus mauvais, ne plus vicieux et plus infect ne plus guormand que lui L. viii. c. 13.

upon Naples or even for more extensive projects It was now two centuries since the kings of France had begun to aim by intervals, at conquests in Italy Philip the Fair and his suc cessors were anxious to keep up a connection with the Guelf party, and to be considered its natural heads, as the German emperors were of the Ghibelins The long English wars changed all views of the court of France to self defence But in the fifteenth century its plans of aggrandizement beyond the Alps began to revive Several times, as I have mentioned the republic of Genoa put itself under the dominion of France The dukes of Savoy possessing most part of Piedmont and masters of the mountain passes were by birth intermarriage, and habitual policy completely dedicated to the French in terests q In the former wars of Ferdinand against the house of Anjou Pope Pius II a very enlightened statesman fore saw the danger of Italy from the prevailing influence of France and deprecated the introduction of her armies r But at that time the central parts of Lombardy were held by a man equally renowned as a soldier and a politician Francesco Sforza Con scious that a claim upon his own dominions subsisted in the house of Orleans he maintained a strict alliance with the Aragonese dynasty at Naples as having a common interest against France But after his death the connection between Milan and Naples came to be weakened In the new system of alliances Milan and Florence sometimes including Venice, were combined against Ferdinand and Sixtus IV an unprin cipled and restless pontiff Ludovico Sforza who had usurped the guardianship of his nephew the Duke of Milan found as that young man advanced to maturity that one crime required to be completed by another To depose and murder his ward was however a scheme that prudence though not conscience,

q Den na Stor a dell Ital a Occ den tale t pass m Lou s XI treated Savoy as a fief of France nterfer ng in all ts affa rs and even tak ng on h m self the regency after the death of Ph l bert I under pretence of prevent ng d sorders p 185. The Marqu s of Sa l zzo who possessed cons derable ter r tor es n the sou h of P edmont had done homage to France ever s nce 1353 (p 40) though to the injury of h s real superior the Duke of Savoy Th s gave France another pretext for inter ference n Italy p 187

r Cosmo de Med c n a conferenee w th I us II at Florence hav ng ex p essed his surpr se that the pope should support Ferdinand Pon fex haud ferendum fu sse a t regem a se const tutum arm s ej ci neque id Ital æ l bertat conducere Gallos, s regnum obt nu ssent Senas haud dub è subac turos Florent nos adversus l l a n h l acturos Bors um Mutinæ ducem Gall s gall orem v der Flam n æ regi los ad Francos nel nare Genuam Franc s subs esse et civ tatem As ensem s pon fex Romanus al quando Francorum am cus assumatur n h l rel qu n Ital a remanere quod non t anseat in Ga o rum nomen tue se Ital am dum Fer d nandum tueretur Commen ar l i Secund L iv p 96. Spondamus who led me to this passage is very angry but the year 1493 proved P us II to be a wary statesman

bade him hesitate to execute He had rendered Ferdinand of Naples and Piero de' Medici, Lorenzo's heir, his decided enemies A revolution at Milan would be the probable result of his continuing in usurpation In these circumstances Ludovico Sforza excited the King of France to undertake the conquest of Naples [s] [AD 1439]

So long as the three great nations of Europe were unable to put forth their natural strength through internal separation or foreign war, the Italians had so little to dread for their independence, that their policy was altogether directed to regulating the domestic balance of power among themselves In the latter part of the fifteenth century a more enlarged view of Europe would have manifested the necessity of reconciling petty animosities, and sacrificing petty ambition, in order to preserve the nationality of their governments, not by attempting to melt down Lombards and Neapolitans, principalities and republics, into a single monarchy, but by the more just and rational scheme of a common federation The politicians of Italy were abundantly competent, as far as cool and clear understandings could render them, to perceive the interests of their country But it is the will of Providence that the highest and surest wisdom, even in matters of policy, should never be unconnected with virtue In relieving himself from an immediate danger, Ludovico Sforza overlooked the consideration that the presumptive heir of the King of France claimed by an ancient title that principality of Milan which he was compassing by usurpation and murder But neither Milan nor Naples was free from other claimants than France nor was she reserved to enjoy unmolested the spoil of Italy A louder and a louder strain of warlike dissonance will be heard from the banks of the Danube and from the Mediterranean gulf The dark and wily Ferdinand, the rash and lively Maximilian, are preparing to hasten into the lists, the schemes of ambition are assuming a more comprehensive aspect, and the controversy of Neapolitan succession is to expand into the long rivalry between the houses of France and Austria But here, while Italy is still untouched, and before as yet the first lances of France gleam along the defiles of the Alps, we close the history of the Middle Ages

[s] Guicciardini l. i.

BOOK IV.

HISTORY OF SPAIN.

BOOK IV.

THE HISTORY OF SPAIN TO THE CONQUEST OF GRANADA.

Kingdom of the Visigoths—Conquest of Spain by the Moors—Gradual Revival of the Spanish Nation—Kingdoms of Leon, Aragon Navarre and Castile successively formed—Chartered Towns of Castile—Military Orders—Conquest of Ferdinand III and James of Aragon—Causes of the Delay in expelling the Moors—History of Castile continued—Character of the Government—Peter the Cruel—House of Trastamare—John II—Henry IV—Constitution of Castile—National Assemblies or Cortes—their constituent Parts—Right of Taxation—Legislation—Privy Council of Castile—Laws for the Protection of Liberty—Imperfections of the Constitution—Aragon—its History in the fourteenth and fifteenth Centuries—disputed Succession—Constitution of Aragon—Free Spirit of its Aristocracy—Privilege of Union—Powers of the Justiza—Legal Securities—Illustrations—other Constitutional Laws—Valencia and Catalonia—Union of two Crowns by the Marriage of Ferdinand and Isabella—Conquest of Granada.

The history of Spain during the middle ages ought to commence with the dynasty of the Visigoths, a nation among the first that assaulted and overthrew the Roman Empire, and whose establishment preceded by nearly half a century the invasion of Clovis. Vanquished by that conqueror in the battle of Poitiers, the Gothic monarchs lost their extensive dominions in Gaul, and transferred their residence from Toulouse to Toledo. But I will not detain the reader by naming one sovereign of that obscure race. It may suffice to mention that the Visigothic monarchy differed in several respects from that of the Franks during the same period. The crown was less hereditary, or at least the regular succession was more frequently disturbed. The prelates had a still more commanding influence in temporal government. The distinction of Romans and barbarians was less marked, the laws more uniform, and approaching nearly to the imperial code. The power of the sovereign was perhaps more limited by an aristocratical council than in France, but it never yielded to the dangerous

influence of mayors of the palace. Civil wars and disputed successions were very frequent, but the integrity of the kingdom was not violated by the custom of partition

Spain, after remaining for nearly three centuries in the possession of the Visigoths, fell under the yoke of the Saracens in 712. The fervid and irresistible enthusiasm which distinguished the youthful period of Mohammedism might sufficiently account for this conquest, even if we could not assign additional causes—the factions which divided the Goths, the resentment of disappointed pretenders to the throne, the provocations, as has been generally believed, of Count Julian, and the temerity that risked the fate of an empire on the chances of a single battle [a] It is more surprising that a remnant of this ancient monarchy should not only have preserved its national liberty and name in the northern mountains, but waged for some centuries a successful, and generally an offensive warfare against the conquerors, till the balance was completely turned in its favor, and the Moors were compelled to maintain almost as obstinate and protracted a contest for a small portion of the peninsula But the Arabian monarchs of Cordova found in their success and imagined security a pretext for indolence; even in the cultivation of science and contemplation of the magnificent architecture of their mosques and palaces they forgot their poor but daring enemies in the Asturias; while, according to the nature of despotism, the fruits of wisdom or bravery in one generation were lost in the follies and effeminacy of the next. Their kingdom was dismembered by successful rebels, who formed the states of Toledo, Huesca, Saragossa, and others less eminent; and these, in their own mutual contests, not only relaxed their natural enmity towards the Christian princes, but sometimes sought their alliance [b]

The last attack which seemed to endanger the reviving monarchy of Spain was that of Almanzor, the illustrious vizier of Haccham II, towards the end of the tenth century, wherein the city of Leon, and even the shrine of Compostella, were burned to the ground. For some ages before this transient reflux, gradual encroachments had been made upon the Saracens, and the kingdom originally styled of Oviedo, the seat of which was removed to Leon in 914, had extended its boundary to the

[a] [Note]

[b] Cardonne, Histoire de l'Afrique et de l'Espagne

Douro, and even to the mountainous chain of the Guadarrama. The province of Old Castile, thus denominated, as is generally supposed, from the castles erected while it remained a march or frontier against the Moors, was governed by hereditary counts, elected originally by the provincial aristocracy, and virtually independent, it seems probable, of the kings of Leon, though commonly serving them in war as brethren of the same faith and nation [c]

While the kings of Leon were thus occupied in recovering the western provinces, another race of Christian princes grew up silently under the shadow of the Pyrenean mountains. Nothing can be more obscure than the beginnings of those little states which were formed in Navarre and the country of Soprarbe. They might perhaps be almost contemporaneous with the Moorish conquests. On both sides of the Pyrenees dwelt an aboriginal people, the last to undergo the yoke, and who had never acquired the language, of Rome. We know little of these intrepid mountaineers in the dark period which elapsed under the Gothic and Frank dynasties, till we find them cutting off the rear-guard of Charlemagne in Roncesvalles, and maintaining at least their independence, though seldom, like the kings of Asturias, waging offensive war against the Saracens. The town of Jaca, situated among long narrow valleys that intersect the southern ridges of the Pyrenees, was the capital of a little free state, which afterwards expanded into the monarchy of Aragon [d] A territory rather more extensive

[c] According to Roderic of Toledo, one of the earliest Spanish historians, though not older than the beginning of the thirteenth century, the nobles of Castile, in the reign of Froila, about the year 924, sibi et posteris provident, et duos milites non de potentioribus, sed de prudentioribus elegerunt, quos et judices statuerunt, ut dissensiones patriæ et querelantium causæ suo judicio sopirentur. l. v. c. 1. Several other passages in the same writer prove that the counts of Castile were nearly independent of Leon at least from the time of Ferdinand Gonsalvo about the middle of the tenth century. Ex quo iste suscepit suæ patriæ comitatum, cessaverunt reges Asturiarum insolescere in Castellam, et a flumine Piscoricâ nihil amplius vindicârunt. l. v. c. 2. Marina, in his Ensayo Historico-Critico, is disposed to controvert this fact.

[d] The Fueros, or written laws of Jaca, were perhaps more ancient than any local customary in Europe. Alfonso III. confirms them by name of the ancient usages of Jaca. They prescribe the descent of lands and movables, as well as the election of municipal magistrates. The following law, which enjoins the rising in arms on a sudden emergency, illustrates, with a sort of romantic wildness, the manners of a pastoral but warlike people, and reminds us of a well known passage in the Lady of the Lake. De appellitis ita statuimus. Cum homines de villis, vel qui stant in montanis cum suis ganatis [gregibus], audierint appellitum, omnes capiant arma, et dimissis ganatis, et omnibus aliis suis faziendis [negotiis] sequantur appellitum. Et si illi qui fuerint magis remoti, invenerint in villa magis proximâ appellito, [deest aliquid?] omnes qui nondum fuerint egressi tunc villam illam, quæ tardius secuta est appellitum pecent [solvant] unam beccam [vaccam], et unusquisque homo ex illis qui tardius secutus est appellitum et quem magis remoti præcesserint, pecet tres solidos, quomodo nobis videbitur, partiendos. Tamen in Jacâ et in aliis villis, sint aliqui

These were established at an earlier period than in France and England, and were, in some degree, of a peculiar description Instead of purchasing their immunities, and almost their personal freedom, at the hands of a master, the burgesses of Castilian towns were invested with civil rights and extensive property on the more liberal condition of protecting their country The earliest instance of the erection of a community is in 1020, when Alfonso V in the cortes at Leon established the privileges of that city with a regular code of laws, by which its magistrates should be governed The citizens of Carrion, Llanes, and other towns were incorporated by the same prince Sancho the Great gave a similar constitution to Naxara Sepulveda had its code of laws in 1076 from Alfonso VI , in the same reign Logroño and Sahagun acquired their privileges, and Salamanca not long afterwards The fuero, or original charter of a Spanish community, was properly a compact, by which the king or lord granted a town and adjacent district to the burgesses, with various privileges, and especially that of choosing magistrates and a common council, who were bound to conform themselves to the laws prescribed by the founder These laws, civil as well as criminal, though essentially derived from the ancient code of the Visigoths, which continued to be the common law of Castile till the fourteenth or fifteenth century, varied from each other in particular usages which had probably grown up and been established in these districts before their legal confirmation The territory held by chartered towns was frequently very extensive, far beyond any comparison with corporations in our own country or in France including the estates of private landholders, subject to the jurisdiction and control of the municipality as well as its inalienable demesnes allotted to the maintenance of the magistrates and other public expenses In every town the king appointed a governor to receive the usual tributes and watch over the police and the fortified places within the district, but the administration of justice was exclusively reserved to the inhabitants and their elected judges Even the executive power of the royal officer was regarded with jealousy , he was forbidden to use violence towards any one without legal process and by the fuero of Logroño if he attempted to enter forcibly into a private house he might be killed with impunity These democratical customs were altered in the fourteenth

fled for their religion, so that in the southern provinces scarcely any professors of Christianity were left at the time of Ferdinand's invasion An equally severe policy was adopted on the other side The Moors had been permitted to dwell in Saragossa as the Christians had dwelt before, subjects, not slaves, but on the capture of Seville they were entirely expelled, and new settlers invited from every part of Spain The strong fortified towns of Andalusia, such as Gibraltar, Algeciras, Tariffa, maintained also a more formidable resistance than had been experienced in Castile, they cost tedious sieges, were sometimes recovered by the enemy, and were always liable to his attacks But the great protection of the Spanish Mohammedans was found in the alliance and ready aid of their kindred beyond the Straits Accustomed to hear of the African Moors only as pirates, we cannot easily conceive the powerful dynasties, the warlike chiefs, the vast armies, which for seven or eight centuries illustrate the annals of that people Their assistance was already afforded to the true believers in Spain, though their ambition was generally dreaded by those who stood in need of their valor *m*

Probably, however, the kings of Granada were most indebted to the indolence which gradually became characteristic of their enemies By the cession of Murcia to Castile, the kingdom of Aragon shut itself out from the possibility of extending those conquests which had ennobled her earlier sovereigns; and their successors, not less ambitious and enterprising, diverted their attention towards objects beyond the peninsula The Castilian, patient and undesponding in bad success, loses his energy as the pressure becomes less heavy, and puts no ordinary evil in comparison with the exertions by which it must be removed The greater part of his country freed by his arms, he was content to leave the enemy in a single province rather than undergo the labor of making his triumph complete

If a similar spirit of insubordination had not been found compatible in earlier ages with the aggrandizement of the Castilian monarchy, we might ascribe its want of splendid successes against the Moors to the continued rebellions which disturbed that government for more than a century after the death of Ferdinand III [A D 1252] His son, Alfonso X, might justly acquire the surname of Wise for his general pro

m Cardonne t. i and i passim

ficiency in learning, and especially in astronomical science, if these attainments deserve praise in a king who was incapable of preserving his subjects in their duty As a legislator, Alfonso, by his code of the Siete Partidas, sacrificed the ecclesiastical rights of his crown to the usurpation of Rome,* and his philosophy sunk below the level of ordinary prudence when he permitted the phantom of an imperial crown in Germany to seduce his hopes for almost twenty years For the sake of such an illusion he would even have withdrawn himself from Castile, if the states had not remonstrated against an expedition that would probably have cost him the kingdom In the latter years of his turbulent reign Alfonso had to contend against his son The right of representation was hitherto unknown in Castile, which had borrowed little from the customs of feudal nations By the received law of succession the nearer was always preferred to the more remote, the son to the grandson Alfonso X had established the different maxim of representation by his code of the Siete Partidas, the authority of which, however, was not universally acknowledged The question soon came to an issue on the death of his elder son Ferdinand, leaving two male children, Sancho their uncle asserted his claim, founded upon the ancient Castilian right of succession, and this, chiefly no doubt through fear of arms though it did not want plausible arguments, was ratified by an assembly of the cortes, and secured, notwithstanding the king s reluctance, by the courage of Sancho But the descendants of Ferdinand generally called the infants of la Cerda by the protection of France, to whose royal family they were closely allied and of Aragon, always prompt to interfere in the disputes of a rival people, continued to assert their pretensions for more than half a century, and, though they were not very successful did not fail to aggravate the troubles of their country

The annals of Sancho IV [A D 1284] and his two immediate successors Ferdinand IV [A D 1295] and Alfonso XI [A D 1312] present a series of unhappy and dishonorable civil dissensions with too much rapidity to be remembered or even understood. Although the Castilian nobility had no pretence to the original independence of the French peers, or to the liberties of feudal tenure they assumed the same privilege of rebelling upon any provocation from their sovereign When

* Marina, Ensayo H storico-Crit co p r etc.

such occurred, they seem to have been permitted, by legal custom, to renounce their allegiance by a solemn instrument, which exempted them from the penalties of treason *o* A very few families composed an oligarchy, the worst and most ruinous condition of political society, alternately the favorites and ministers of the prince, or in arms against him If unable to protect themselves in their walled towns, and by the aid of their faction these Christian patriots retired to Aragon or Granada, and excited an hostile power against their country, and perhaps their religion Nothing is more common in the Castilian history than instances of such defection Mariana remarks coolly of the family of Castro, that they were much in the habit of revolting to the Moors *p* This house and that of Lara were at one time the great rivals for power, but from the time of Alfonso X the former seems to have declined, and the sole family that came in competition with the Laras during the tempestuous period that followed was that of Haro, which possessed the lordship of Biscay by an hereditary title The evils of a weak government were aggravated by the unfortunate circumstances in which Ferdinand IV and Alfonso XI ascended the throne, both minors, with a disputed regency, and the interval too short to give ambitious spirits leisure to subside There is indeed some apology for the conduct of the Laras and Haros in the character of their sovereigns, who had but one favorite method of avenging a dissembled injury, or anticipating a suspected treason Sancho IV assassinates Don Lope Haro in his palace at Valladolid Alfonso XI invites to court the infant Don Juan his first cousin and commits a similar violence Such crimes may be found in the history of other countries but they were nowhere so usual as in Spain which was far behind France, England and even Germany, in civilization

But whatever violence and arbitrary spirit might be imputed to Sancho and Alfonso was forgotten in the unexampled tyranny of Peter the Cruel [A D 1350] A suspicion is frequently intimated by Mariana which seems in more modern times to have gained some credit that party malevolence has at least grossly exaggerated the enormities of this prince *q* It is diffi

o Mariana l x c 11

p Alvarus Castrius patria aliquanto antea ut moris erat, renunciata —Castria gens per hæc tempora ad Mauros sæpe defecisse visa est. l x c. 12. See also chapters 17 and 19

q There is in general room enough for scepticism as to the characters of men

cult, however, to believe that a number of atrocious acts unconnected with each other, and generally notorious enough in their circumstances, have been ascribed to any innocent man The history of his reign, chiefly derived, it is admitted, from the pen of an inveterate enemy, Lope de Ayala, charges him with the murder of his wife, Blanche of Bourbon, most of his brothers and sisters, with Eleanor Gusman, their mother, many Castilian nobles, and multitudes of the commonalty, besides continual outrages of licentiousness, and especially a pretended marriage with a noble lady of the Castrian family At length a rebellion was headed by his illegitimate brother, Henry Count of Trastamare, with the assistance of Aragon and Portugal This, however, would probably have failed of dethroning Peter, a resolute prince, and certainly not destitute of many faithful supporters, if Henry had not invoked the more powerful succor of Bertrand du Guesclin, and the companies of adventure, who, after the pacification between France and England had lost the occupation of war, and retained only that of plunder With mercenaries so disciplined it was in vain for Peter to contend, but, abandoning Spain for a moment, he had recourse to a more powerful weapon from the same armory Edward the Black Prince, then resident at Bordeaux, was induced by the promise of Biscay to enter Spain as the ally of Castile, and at the great battle of Navarette he continued lord of the ascendant over those who had so often already been foiled by his prowess [A D 1367] Du Guesclin was made prisoner, Henry fled to Aragon and Peter remounted the throne But a second revolution was at hand the Black Prince whom he had ungratefully offended, withdrew into Guienne and he lost his kingdom and life in a second short contest with his brother

A more fortunate period began with the accession of Henry [A D 1368] His own reign was hardly disturbed by any rebel

who are only known to us through their enemies. If story is full of calumnies, and of calumnies that can never be effaced. But I really see no ground for thinking charitably of Peter the Cruel. Froissart, part 1. c. 39, and Matteo Villani (in Script. Rerum Ital. c. t. xiv. p. 33) the latter of whom died before the rebellion of Henry of Trastamare speak of him much in the same terms as the Spanish historians. And why should Ayala be doubted when he gives a long list of murders committed in the face of day within the recollection of many persons living when he wrote? There may be a question whether Richard III smothered his nephews in the Tower but nobody can dispute that Henry VIII cut off Anna Boleyn's head.

The passage from Matteo Villani above mentioned is as follows —Comincio aspramente a se far ubbidire perchè temendo de suo baron trovo modo d far affamare l uno l altro e prendendo cagione, gli cominciò ad uccidere con le sue mani. Il in brieve tempo ne fece morire 23 e tre suoi fratelli fece morire etc.

lion, and though his successors, John I [A D 1379] and Henry III [A D 1390], were not altogether so unmolested, especially the latter, who ascended the throne in his minority, yet the troubles of their time were slight in comparison with those formerly excited by the houses of Lara and Haro, both of which were now happily extinct Though Henry II 's illegitimacy left him no title but popular choice, his queen was sole representative of the Cerdas, the offspring, as has been mentioned above, of Sancho IV 's elder brother, and, by the extinction of the younger branch, unquestioned heiress of the royal line Some years afterwards by the marriage of Henry III with Catherine, daughter of John of Gaunt and Constance, an illegitimate child of Peter the Cruel, her pretensions, such as they were, became merged in the crown

No kingdom could be worse prepared to meet the disorders of a minority than Castile, and in none did the circumstances so frequently recur John II was but fourteen months old at his accession, and but for the disinterestedness of his uncle Ferdinand, the nobility would have been inclined to avert the danger by placing that prince upon the throne [A D 1406] In this instance, however, Castile suffered less from faction during the infancy of her sovereign than in his maturity The queen dowager, at first jointly with Ferdinand, and solely after his accession to the crown of Aragon, administered the government with credit Fifty years had elapsed at her death in 1418 since the elevation of the house of Trastamare, who had entitled themselves to public affection by conforming themselves more strictly than their predecessors to the constitutional laws of Castile, which were never so well established as during this period In external affairs their reigns were not what is considered as glorious They were generally at peace with Aragon and Granada, but one memorable defeat by the Portuguese at Aljubarrota disgraces the annals of John I, whose cause was as unjust as his arms were unsuccessful [A D 1385] This comparatively golden period ceases at the majority of John II His reign was filled up by a series of conspiracies and civil wars, headed by his cousins John and Henry, the infants of Aragon who enjoyed very extensive territories in Castile, by the testament of their father Ferdinand Their brother the King of Aragon frequently lent the assistance of his arms John himself, the elder of these two princes by marriage with the

heiress of the kingdom of Navarre, stood in a double relation to Castile, as a neighboring sovereign, and as a member of the native oligarchy These conspiracies were all ostensibly directed against the favorite of John II, Alvaro de Luna, who retained for five and thirty years an absolute control over his feeble master The adverse faction naturally ascribed to this powerful minister every criminal intention and all public mischiefs He was certainly not more scrupulous than the generality of statesmen, and appears to have been rapacious in accumulating wealth But there was an energy and courage about Alvaro de Luna which distinguishes him from the cowardly sycophants who usually rise by the favor of weak princes, and Castile probably would not have been happier under the administration of his enemies His fate is among the memorable lessons of history After a life of troubles endured for the sake of this favorite, sometimes a fugitive, sometimes a prisoner, his son heading rebellions against him, John II suddenly yielded to an intrigue of the palace, and adopted sentiments of dislike towards the man he had so long loved No substantial charge appears to have been brought against Alvaro de Luna, except that general malversation which it was too late for the king to object to him The real cause of John's change of affection was, most probably, the insupportable restraint which the weak are apt to find in that spell of a commanding understanding which they dare not break, the torment of living subject to the ascendant of an inferior, which has produced so many examples of fickleness in sovereigns That of John II is not the least conspicuous Alvaro de Luna was brought to a summary trial and beheaded, his estates were confiscated He met his death with the intrepidity of Strafford, to whom he seems to have borne some resemblance in character

John II did not long survive his minister, dying in 1454, after a reign that may be considered as inglorious, compared with any except that of his successor If the father was not respected the son fell completely into contempt. He had been governed by Pacheco Marquis of Villena, as implicitly as John by Alvaro de Luna This influence lasted for some time afterwards But the king inclining to transfer his confidence to the Queen Joanna of Portugal and to one Bertrand de Cueva, upon whom common fame had fixed as her paramour, a powerful confederacy of disaffected nobles was formed against the

royal authority In what degree Henry IV 's government had been improvident or oppressive towards the people, it is hard to determine The chiefs of that rebellion, Carillo Archbishop of Toledo, the admiral of Castile, a veteran leader of faction, and the Marquis of Villena, so lately the king s favorite, were undoubtedly actuated only by selfish ambition and revenge They deposed Henry in an assembly of their faction at Avila with a sort of theatrical pageantry which has often been described [A D 1465] But modern historians, struck by the appearance of judicial solemnity in this proceeding, are sometimes apt to speak of it as a national act; while, on the contrary, it seems to have been reprobated by the majority of the Castilians as an audacious outrage upon a sovereign who, with many defects, had not been guilty of any excessive tyranny The confederates set up Alfonso, the king's brother, and a civil war of some duration ensued, in which they had the support of Aragon The Queen of Castile had at this time borne a daughter, whom the enemies of Henry IV, and indeed no small part of his adherents, were determined to treat as spurious Accordingly, after the death of Alfonso, his sister Isabel was considered as heiress of the kingdom She might have aspired, with the assistance of the confederates, to its immediate possession, but, avoiding the odium of a contest with her brother, Isabel agreed to a treaty, by which the succession was absolutely settled upon her This arrangement was not long afterwards followed by the union of that princess with Ferdinand son of the King of Aragon [A D 1469] This marriage was by no means acceptable to a part of the Castilian oligarchy, who had preferred a connection with Portugal And as Henry had never lost sight of the interests of one whom he considered or pretended to consider as his daughter, he took the first opportunity of revoking his forced disposition of the crown and restoring the direct line of succession in favor of the Princess Joanna Upon his death in 1474, the right was to be decided by arms Joanna had on her side the common presumptions of law, the testamentary disposition of the late king, the support of Alfonso King of Portugal to whom she was betrothed, and of several considerable leaders among the nobility, as the young Marquis of Villena, the family of Mendoza and the Archbishop of Toledo who charging Ferdinand with ingratitude, had quitted a party which he had above all men con-

in 1020, and at several subsequent times during that and the ensuing century, we find only the bishops and magnats recited as present According to the General Chronicle of Spain, deputies from the Castilian towns formed a part of cortes in 1169 a date not to be rejected as incompatible with their absence in 1178 However, in 1188 the first year of the reign of Alfonso IX they are expressly mentioned, and from that era were constant and necessary parts of those general assemblies[t] It has been seen already that the corporate towns or districts of Castile had early acquired considerable importance arising less from commercial wealth to which the towns of other kingdoms were indebted for their liberties than from their utility in keeping up a military organization among the people To this they probably owe their early reception into the cortes as integrant portions of the legislature since we do not read that taxes were frequently demanded, till the extravagance of later kings and their alienation of the domain compelled them to have recourse to the national representatives

Every chief town of a concejo or corporation ought perhaps by the constitution of Castile to have received its regular writ for the election of deputies to cortes[u] But there does not appear to have been in the best times any uniform practice in this respect At the cortes of Burgos in 1315 we find one hundred and ninety two representatives from more than ninety towns, at those of Madrid in 1391 one hundred and twenty six were sent from fifty towns and the latter list contains names of several places which do not appear in the former[v] No deputies were present from the kingdom of Leon in the cortes of Alcala in 1348 where among many important enactments the code of the Siete Partidas first obtained a legislative recognition[w] We find in short a good deal more irregularity than during the same period in England where the number of electing boroughs varied pretty considerably at every parliament Yet the cortes of Castile did not cease to be a numerous body and a fair representation of the people till the reign of John II The first princes of the house of Trastamare had acted in all

[t] Ensayo Hist Crit p 77 Teoria de las Cortes t p 66. Marina seems to have somewhat changed his opinion since the publication of the former work where he inclines to assert that the commons were from the earliest times admitted into the legislature. In 1188 the first year of the reign of Alfonso IX we find positive mention of la muchedumbre de las ciudades è embiados de cada ciudat

Teoria de las Cortes p 139

[u] Id p 148 Geddes gives a list of one hundred and twenty-seven deputies from forty eight towns to the cortes at Madrid in 1390.—Miscellaneous Tracts vol

[w] Id p 154.

points with the advice of their cortes But John II, and still more his son Henry IV, being conscious of their own unpopularity, did not venture to meet a full assembly of the nation Their writs were directed only to certain towns—an abuse for which the looseness of preceding usage had given a pretence *x* It must be owned that the people bore it in general very patiently Many of the corporate towns, impoverished by civil warfare and other causes, were glad to save the cost of defraying their deputies' expenses Thus, by the year 1480, only seventeen cities had retained privilege of representation A vote was afterwards added for Granada, and three more in later times for Palencia, and the provinces of Estremadura and Galicia *y* It might have been easy perhaps to redress this grievance while the exclusion was yet fresh and recent But the privileged towns, with a mean and preposterous selfishness, although their zeal for liberty was at its height, could not endure the only means of effectually securing it, by a restoration of elective franchises to their fellow-citizens The cortes of 1506 assert, with one of those bold falsifications upon which a popular body sometimes ventures, that "it is established by some laws, and by immemorial usage, that eighteen cities of these kingdoms have the right of sending deputies to cortes, and no more," remonstrating against the attempts made by some other towns to obtain the same privilege, which they request may not be conceded This remonstrance is repeated in 1512 *z*

From the reign of Alfonso XI, who restrained the government of corporations to an oligarchy of magistrates, the right of electing members of cortes was confined to the ruling body, the bailiffs or regidores, whose number seldom exceeded twenty-four, and whose succession was kept up by close election among themselves *a* The people therefore had no direct share in the choice of representatives Experience proved, as several instances in these pages will show, that even upon this

x Sepades (says John II in 1442) que en el ayuntam ento que yo fice en la noble v lla de Valladol d los procuradores de ciertas c bdades é villas de mis reynos que por mi mandado fueron llamados This language is repeated as to subsequent meet ngs p. 156.

y The c t es which reta ned their representat on in cortes were Burgos Toledo (there was a constant d spute for precedence between these two) Leon Granada Cordova, Murc a Jaen Zam ora Toro, Soria, Valladolid Salamanca, Segovia Avila Madrid Guadalaxara, and Cuenca. The representatives of these were supposed to vote not only for their immediate constituents but for other adjacent towns Thus Toro voted for Talenc a and the k ngdom of Galicia, before they obta ned separate votes Salamanca for most of Estrema dura Guadalaxara for Siguenza and four hundred other towns Teoria de las Cortes pp 160, 268.

z Idem p 161

a Idem pp 86, 19

ros Castile never adopted the institution of deputies from this order, as in the States General of France and some other countries, much less that liberal system of landed representation, which forms one of the most admirable peculiarities in English constitution It will be seen hereafter that spiritual and even temporal peers were summoned by English kings with much irregularity, and the disordered state of Castile through almost every reign was likely to prevent the establishment of any fixed usage in this and most other points

The primary and most essential characteristic of a limited monarchy is that money can only be levied upon the people through the consent of their representatives This principle was thoroughly established in Castile, and the statutes which enforce it, the remonstrances which protest against its violation, bear a lively analogy to corresponding circumstances in the history of English constitution The lands of the nobility and clergy were, I believe, always exempted from direct taxation—an immunity which perhaps rendered the attendance of the members of those estates in the cortes less regular The corporate districts or concejos which as I have observed already, differed from the communities of France and England by possessing a large extent of territory subordinate to the principal town, were bound by their charter to a stipulated annual payment, the price of their franchises, called moneda forera[1] Beyond this sum nothing could be demanded without the consent of the cortes Alfonso VIII, in 1177, applied for a subsidy towards carrying on the siege of Cuenca Demands of money do not however seem to have been very usual before the prodigal reign of Alfonso X That prince and his immediate successors were not much inclined to respect the rights of their subjects, but they encountered a steady and insuperable resistance Ferdinand IV in 1307, promises to raise no money beyond his legal and customary dues A more explicit law was enacted by Alfonso XI in 1328 who bound himself not to exact from his people or cause them to pay any tax, either partial or general not hitherto established by law, without the previous grant of all the deputies convened to the

[1] Marina Ensayo Hist Crit. cap 158 Teoria de las Cortes t p 387 This is expressed in one of their fueros or charters Liberi et ingenui semper maneatis reddendo mihi et successoribus meis in unoquoque anno in die Pentecostos de unaquaque domo 12 denarios et mihi cum bonâ voluntate vestra fecerit is nullum servitium facatis

cortes *j* This abolition of illegal impositions was several times confirmed by the same prince The cortes, in 1393, having made a grant to Henry III, annexed this condition, that "since they had granted him enough for his present necessities, and even to lay up a part for a future exigency, he should swear before one of the archbishops not to take or demand any money, service, or loan, or anything else, of the cities and towns, nor of individuals belonging to them, on any pretence of necessity, until the three estates of the kingdom should first be duly summoned and assembled in cortes according to ancient usage And if any such letters requiring money have been written, that they shall be obeyed and not complied with' *k* His son John II, having violated this constitutional privilege on the allegation of a pressing necessity, the cortes, in 1420 presented a long remonstrance, couched in very respectful but equally firm language wherein they assert 'the good custom, founded in reason and in justice, that the cities and towns of your kingdoms shall not be compelled to pay taxes or requisitions or other new tribute unless your highness order it by advice and with the grant of the said cities and towns and of their deputies for them' And they express their apprehension lest this right should be infringed because as they say, 'there remains no other privilege or liberty which can be profitable to subjects if this be shaken' *l* The king gave them as full satisfaction as they desired that his encroachment should not be drawn into precedent Some fresh abuses during the unfortunate reign of Henry IV produced another declaration in equally explicit language forming part of the sentence awarded by the arbitrators to whom the differences between the king and his people had been referred at Medina del Campo in 1465 *m* The catholic kings as they are emi

j De los con echar n n mandar pagar pecho desaforado n nguno espec al n n general en toda m t erra s n ser llama dos primeramente á cortes é otorgado por todos los procuradores que hi ven eren p 388

k Obedec das é non cumpl das Th s express on occurs frequent y n pro- v s ons made aga nst llegal acts of the crown and s character st c of the s n gular respect w th wh ch the Span ards always thought t r ght to treat the r sovere gn wh le they were res st ng the abuses of h s author ty

l La buena costumbre é possess on fundada en razon é en just c a que las c bdades é v llas de vuestros re nos ten an de no ser mandado coger monedas é ped dos n n otro tr buto nuevo alguno en los vuestros re nos s n que la vuestra senor a lo faga é ordene de consejo e con otorgam ento de las c bdades é v las de los vuestros re nos é de sus procuradores en su nombre no queda otro prev leg o ni l bertad de que los subd tos puedan gozar n approvechar quebrantado el sobre d cho t p 30

m Declaramos e ordenamos que el d cho senor re n n los otros reyes que despues del fueren non echan n n repar tan n n p dan ped dos n n monedas en sus reynos salvo por gran necess dad é seyendo pr mero accordado con los perlados é grandes de sus reynos e con los otros que a la sazon res d erin en

kingdoms that your majesty should direct them to be lowered, both as a relief to your wants, and that all the great men and other subjects of your majesty may take example therefrom to restrain the great disorder and excess they commit in that respect" *x*

The forms of a Castilian cortes were analogous to those of an English parliament in the fourteenth century They were summoned by a writ almost exactly coincident in expression with that in use among us.*y* The session was opened by a speech from the chancellor or other chief officer of the court The deputies were invited to consider certain special business, and commonly to grant money After the principal affairs were despatched they conferred together, and, having examined the instructions of their respective constituents, drew up a schedule of petitions *z* These were duly answered one by one, and from the petition and answer, if favorable, laws were afterwards drawn up where the matter required a new law, or promises of redress were given if the petition related to an abuse or grievance In the struggling condition of Spanish liberty under Charles I, the crown began to neglect answering the petitions of cortes, or to use unsatisfactory generalities of expression This gave rise to many remonstrances The deputies insisted in 1523 on having answers before they granted money They repeated the same contention in 1525, and obtained a general law inserted in the Recopilacion enacting that the king should answer all their petitions before he dissolved the assembly *a* This, however, was disregarded as before, but the cortes whose intrepid honesty under Philip II so often attracts our admiration, continued as late as 1586 to appeal to the written statute and lament its violation *b*

According to the ancient fundamental constitution of Castile, the king did not legislate for his subjects without their consent The code of the Visigoths called in Spain the Fuero Jusgo was enacted in public councils as was also the laws of the early kings of Leon which appears by the reciting words of their preambles *c* This consent was originally given only

x Senhor los gastos de vuestro real estado y mesa son muy crescidos y entendemos que conviene a mucho al bien de estos reinos que V M los mandasse moderar así para algun remedio de sus necessidades como para que de V M tomen egempló todos los grandes y caballeros y otros subditos de V M. en la gran desorden y excessos que hacen en las cosas sobredichas p 437

y Mariana t 2 p 175 t 1 p 103

z t 1 p. 278.

a p 301

b pp 288-304

c t 1 p 202. The acts of the cortes of Leon in 1020 run thus Omnes pon

by the higher estates who might be considered in a large sense, as representing the nation, though not chosen by it, but from the end of the twelfth century by the elected deputies of the commons in cortes The laws of Alfonso X in 1258, those of the same prince in 1274 and many others in subsequent times, are declared to be made with the consent (con acuerdo) of the several orders of the kingdom More commonly, indeed the preamble of Castilian statutes only recites their advice (consejo) but I do not know that any stress is to be laid on this circumstance The laws of the Siete Partidas, compiled by Alfonso X did not obtain any direct sanction till the famous cortes of Alcala in 1348 when they were confirmed along with several others forming altogether the basis of the statute law of Spain *d* Whether they were in fact received before that time has been a matter controverted among Spanish antiquaries and upon the question of their legal validity at the time of their promulgation depends an important point in Castilian history the disputed right of succession between Sancho IV and the infants of la Cerda, the former claiming under the ancient customary law the latter under the new dispositions of the Siete Partidas If the king could not legally change the established laws without consent of his cortes as seems most probable the right of representative succession did not exist in favor of his grandchildren and Sancho IV cannot be considered as an usurper

It appears upon the whole to have been a constitutional principle that laws could neither be made nor annulled except in cortes In 1506 this is claimed by the deputies as an established right *e* John I had long before admitted that what was done by cortes and general assemblies could not be undone by letters missive but by such cortes and assemblies alone *f* For the kings of Castile had adopted the English

t fces et abbates et opt mates regni H span æ jussu ps us reg s tal a decre a decrev mus quæ f rm ter teneantur fu t r s tempor bus. So those of Salaman ca n t 8 Lgo rex Fernandus nter cætera quæ cum ct scop s et abbat bus regn nostr et quamplurim s al s re l g os s cum com bus terrarum et pr nc p bus et recto bus prov nc arum, toto posse tenenda statu mus apud Sa amancam

d Ensayo Hist Cr t p. 353 Teor a de las Cortes, t. i. p. 77 Mar na seems to have changed h s op n on be ween the pub cat on of these two works n the former of which he contends for the previous authority of the S ete Part das, and in favor of the infants of la Cerda.

e Los reyes establ c eron que cuando hub esen de hacer leyes para que fuesen provechosas á sus reynos y cada prov nc as fuesen proveidas, se llamasen cortes y procuradores que entend esen en ellas y por esto se es ablec o lei que no se hiciesen n renovasen leyes s no en cortes. Teoria de las Cortes t. ii. p. 38.

f Lo que es fecho por cortes é por ayun am entos que non se pueda d s facer por las tales cartas salvo por ayuntamientos é cortes. Teor a de las Cortes, t. ii. p. 38.

practice of dispensing with statutes by a non obstante clause in their grants. But the cortes demonstrated more steadily against this abuse than the English parliament, who suffered it to remain in a certain degree till the Revolution It was several times enacted upon their petition, especially by an explicit statute of Henry II, that grants and letters-patent dispensing with statutes should not be obeyed *g* Nevertheless, John II., trusting to force or the servility of the judges, had the assurance to dispense explicitly with this very law.*h* The cortes of Valladolid, in 1442, obtained fresh promises and enactments against such an abuse. Philip I. and Charles I. began to legislate without asking the consent of cortes; this grew much worse under Philip II., and reached its height under his successors, who entirely abolished all constitutional privileges.*i* In 1555 we find a petition that laws made in cortes should be revoked nowhere else. The reply was such as became that age: "To this we answer, that we shall do what best suits our government." But even in 1619, and still afterwards, the patriot representatives of Castile continued to lift an unavailing voice against illegal ordinances, though in the form of very humble petition; perhaps the latest testimonies to the expiring liberties of their country.*j* The denial of exclusive legislative authority to the crown must, however, be understood to admit the legality of particular ordinances designed to strengthen the king's executive government.*k* These, no doubt, like the royal proclamations in England, extended sometimes very far, and subjected the people to a sort of arbitrary coercion much beyond what our enlightened notions of freedom would consider as reconcilable to it But in the middle ages such temporary commands and prohibitions were not reckoned strictly legislative, and passed, perhaps rightly, for inevitable consequences of a scanty code and short sessions of the national council

The kings were obliged to swear to the observance of laws enacted in cortes, besides their general coronation oath to keep the laws and preserve the liberties of their people Of this we find several instances from the middle of the thirteenth century, and the practice continued till the time of

g Teoria de las Cortes, 215.
h p. 216, t. iii p. 40.
i t. iii p. 218.
j Ha suplicado el reino á v. m. no se promulguen nuevas leyes, ni en todo ni en parte las antiguas se alteren, sin que sea por cortes y por ser de tanta importancia vuelve el reino suplicarle humilmente á v. m. p. 220.
k p. 307.

certainly permitted much authority in public deliberations to the cortes. Among other instances, which indeed will continually be found in the common civil histories, the cortes of Ocana, in 1469, remonstrate with Henry IV. for allying himself with England rather than France, and give, as the first reason of complaint, that, "according to the laws of your kingdom, when the kings have anything of great importance in hand, they ought not to undertake it without advice and knowledge of the chief towns and cities of your kingdom." [r] This privilege of general interference was asserted, like other ancient rights, under Charles, whom they strongly urged, in 1548, not to permit his son Philip to depart out of the realm [s] It is hardly necessary to observe that, in such times, they had little chance of being regarded

The kings of Leon and Castile acted, during the interval of the cortes, by the advice of a smaller council, answering, as it seems, almost exactly to the king's ordinary council in England. In early ages, before the introduction of the commons, it is sometimes difficult to distinguish this body from the general council of the nation; being composed, in fact, of the same class of persons, though in smaller numbers A similar difficulty applies to the English history. The nature of their proceedings seems best to ascertain the distinction All executive acts, including those ordinances which may appear rather of a legislative nature, all grants and charters, are declared to be with the assent of the court (curia), or of the magnats of the palace, or of the chiefs or nobles [t] This privy council was an essential part of all European monarchies; and, though the sovereign might be considered as free to call in the advice of whomsoever he pleased, yet, in fact, the princes of the blood and most powerful nobility had anciently a constitutional right to be members of such a council, so that it formed a very material check upon his personal authority.

The council underwent several changes in progress of time, which it is not necessary to enumerate. It was justly deemed an important member of the constitution, and the cortes showed a laudable anxiety to procure its composition in such

r Porque, segunt leyes de nuestros reynos, cuando los reyes han de facer alguna cosa de gran importancia, non lo leben facer sin consejo é sabiduria de las cibdades é villas principales de vuestros reynos. Teoria de las Cortes, t. ii. p. 241

s t. iii. p. 183.

t Cum assensu magnatum palatii: Cum consilio curiæ meæ: Cum consilio et beneplacito omnium principum meorum, nulle contradicente nec reclamente. Teoria de las Cortes, t. iii. p. 325.

a manner as to form a guarantee for the due execution of laws after their own dissolution Several times, especially in minorities, they even named its members or a part of them, and in the reigns of Henry III and John II they obtained the privilege of adding a permanent deputation, consisting of four persons elected out of their own body, annexed as it were to the council, who were to continue at the court during the interval of cortes and watch over the due observance of the laws [u] This deputation continued as an empty formality in the sixteenth century In the council the king was bound to sit personally three days in the week. Their business which included the whole executive government, was distributed with considerable accuracy into what might be despatched by the council alone, under their own seals and signatures, and what required the royal seal [v] The consent of this body was necessary for almost every act of the crown for pensions or grants of money, ecclesiastical and political promotions, and for charters of pardon, the easy concession of which was a great encouragement to the homicides so usual in those ages and was restrained by some of our own laws [w] But the council did not exercise any judicial authority, if we may believe the well informed author from whom I have learned these particulars, unlike in this to the ordinary council of the kings of England It was not until the days of Ferdinand and Isabella that this, among other innovations, was introduced [x]

Civil and criminal justice was administered, in the first instance, by the alcaldes, or municipal judges of towns, elected within themselves, originally, by the community at large but, in subsequent times, by the governing body In other places a lord possessed the right of jurisdiction by grant from the crown not, what we find in countries where the feudal system was more thoroughly established as incident to his own territorial superiority The kings, however began in the thirteenth century to appoint judges of their own called corregidores a name which seems to express concurrent jurisdiction with the regidores, or ordinary magistrates [y] The cortes frequently remonstrated against this encroachment Alfonso XI consented to withdraw his judges from all corporations by which

[u] Teoria de las Cortes, t. ii. p. 345.
[v] Pp. 354.
[w] Pp. 350, 372.
[x] T. ii. pp. 373, 379.
[y] Alfonso X. says, Ningun ome sea osado jugar por ellos, se no fuere alcalde puesto pol el rey Id. fol. — This seems an encroachment on the municipal magistrates.

he had not been requested to appoint them.[a] Some attempts to interfere with the municipal authorities of Toledo produced serious disturbances under Henry III. and John II.[a] Even where the king appointed magistrates at a city's request, he was bound to select them from among the citizens.[b] From this immediate jurisdiction an appeal lay to the adelantado or governor of the province, and from thence to the tribunal of royal alcaldes.[c] The latter, however, could not take cognizance of any cause depending before the ordinary judges; a contrast to the practice of Aragon, where the justiciary's right of evocation (juris firma) was considered as a principal safeguard of public liberty.[d] As a court of appeal, the royal alcaldes had the supreme jurisdiction. The king could only cause their sentence to be revised, but neither alter nor revoke it.[e] They have continued to the present day as a criminal tribunal; but civil appeals were transferred by the ordinances of Toro in 1371 to a new court, styled the king's audience, which, though deprived under Ferdinand and his successors of part of its jurisdictions, still remains one of the principal judicatures in Castile.[f]

No people in a half-civilized state of society have a full practical security against particular acts of arbitrary power. They were more common perhaps in Castile than in any other European monarchy which professed to be free Laws indeed were not wanting to protect men's lives and liberties, as well as their properties. Ferdinand IV., in 1299, agreed to a petition that "justice shall be executed impartially according to law and right; and that no one shall be put to death or imprisoned, or deprived of his possessions, without trial, and that this be better observed than heretofore."[g] He renewed the same law in 1307 Nevertheless, the most remarkable circumstance of this monarch's history was a violation of so sacred and apparently so well established a law. Two gentlemen having been accused of murder, Ferdinand, without waiting for any process, ordered them to instant execution. They summoned

[a] Teoria de las Cortes, t. ii. p. 251
[a] p. 255 Mariana, l. xx. c. 13
[b] p. 255
[c] p. 266.
[d] p. 260.
[e] pp. 287, 304.
[f] Teoria de las Cortes, t. ii. pp. 292-302. The use of the present tense in this and many other passages will not confuse the attentive reader.

[g] Que mandase facer la justicia en aquellos que la merecen comunalmente con fuero é con derecho é los homes que non sean muertos nin presos nin tomados lo que han sin ser oidos por derecho ó por fuero de aquel logar do acaesciere, é que sea guardado mejor que se guardo fasta aqui. Marina, Ensayo Hist Critico, p. 148.

him with their last words to appear before the tribunal of God in thirty days; and his death within the time, which has given him the surname of the Summoned, might, we may hope, deter succeeding sovereigns from iniquity so flagrant. But from the practice of causing their enemies to be assassinated, neither law nor conscience could withhold them. Alfonso XI. was more than once guilty of this crime Yet he too passed an ordinance in 1325 that no warrant should issue for putting any one to death, or seizing his property, till he should be duly tried by course of law. Henry II. repeats the same law in very explicit language.[h] But the civil history of Spain displays several violations of it. An extraordinary prerogative of committing murder appears to have been admitted in early times by several nations who did not acknowledge unlimited power in their sovereign.[i] Before any regular police was established, a powerful criminal might have been secure from all punishment but for a notion, as barbarous as any which it served to counteract, that he could be lawfully killed by the personal mandate of the king. And the frequent attendance of sovereigns in their courts of judicature might lead men not accustomed to consider the indispensable necessity of legal forms to confound an act of assassination with the execution of justice.

Though it is very improbable that the nobility were not considered as essential members of the cortes, they certainly attended in smaller numbers than we should expect to find from the great legislative and deliberative authority of that assembly. This arose chiefly from the lawless spirit of that martial aristocracy which placed less confidence in the constitutional methods of resisting arbitrary encroachment than in its own armed combinations.[j] Such confederacies to obtain redress of grievances by force, of which there were five or six remarkable instances, were called Hermandad (brotherhood or union), and, though not so explicitly sanctioned as they were by the celebrated Privilege of Union in Aragon, found countenance in a law of Alfonso X., which cannot be deemed so much to

h Que non mandemos matar nin prender nin liziar nin despechar nin tomar á alguno ninguna cosa de lo suyo, sin ser anté llamado é oido é vencido por fuero é por derecho, por querella nin por querellas que á nos fuesen dadas, segunt que esto está ordenado por el rei don Alonso nuestro padre Teoria de las Cortes, t. ii. p. 267

i Si quis hominem per jussionem regis vel ducis sui occiderit, non requiratur ei, nec sit fidelis, quia jussio domini sui fuit, et non potuit contradicere jussioni. Leges Inæ, Alfredi, Ethelstani, Edmundi, Edgari, Canuti, Wilhelmi I. in Ditmar Capitularibus.

j Teoria de las Cortes, t. ii. p. 465.

have voluntarily emanated from that prince as to be a record of original rights possessed by the Castilian nobility. "The duty of subjects towards their king," he says, "enjoins them not to permit him knowingly to endanger his salvation, nor to incur dishonor and inconvenience in his person or family, nor to produce mischief to his kingdom. And this may be fulfilled in two ways: one by good advice, showing him the reason wherefore he ought not to act thus; the other by deeds, seeking means to prevent his going on to his own ruin, and putting a stop to those who give him ill counsel, forasmuch as his errors are of worse consequence than those of other men; it is the bounden duty of subjects to prevent his committing them." [k] To this law the insurgents appealed in their coalition against Alvaro de Luna; and indeed we must confess that, however just and admirable the principles which it breathes, so general a license of rebellion was not likely to preserve the tranquillity of a kingdom. The deputies of towns in a cortes of 1445 petitioned the king to declare that no construction should be put on this law inconsistent with the obedience of subjects towards their sovereign; a request to which of course he willingly acceded.

Castile, it will be apparent, bore a closer analogy to England in its form of civil polity than France or even Aragon. But the frequent disorders of its government and a barbarous state of manners rendered violations of law much more continual and flagrant than they were in England under the Plantaganet dynasty. And besides these practical mischiefs, there were two essential defects in the constitution of Castile, through which perhaps it was ultimately subverted. It wanted those two brilliants in the coronet of British liberty, the representation of freeholders among the commons, and trial by jury. The cortes of Castile became a congress of deputies from a few cities, public-spirited indeed and intrepid, as we find them in bad times, to an eminent degree, but too much limited in number, and too unconnected with the territorial aristocracy, to maintain a just balance against the crown. Yet, with every disadvantage, that country possessed a liberal form of government, and was animated with a noble spirit for its defence. Spain, in her late memorable though short resuscitation, might well have gone back to her ancient institutions, and perfected

[k] Ensayo Hist. Critico, p. 312.

a scheme of policy which the great example of England would have shown to be well adapted to the security of freedom What she did, or rather attempted, instead, I need not recall May her next effort be more wisely planned, and more happily terminated!!

Though the kingdom of Aragon was very inferior in extent to that of Castile, yet the advantages of a better form of government and wiser sovereigns, with those of industry and commerce along a line of seacoast, rendered it almost equal in importance Castile rarely intermeddled in the civil dissensions of Aragon, the kings of Aragon frequently carried their arms into the heart of Castile During the sanguinary outrages of Peter the Cruel, and the stormy revolutions which ended in establishing the house of Trastamare, Aragon was not indeed at peace, nor altogether well governed, but her political consequence rose in the eyes of Europe through the long reign of the ambitious and wily Peter IV, whose sagacity and good fortune redeemed, according to the common notions of mankind the iniquity with which he stripped his relation the King of Majorca of the Balearic islands and the constant perfidiousness of his character I have mentioned in another place the Sicilian war, prosecuted with so much eagerness for many years by Peter III and his son Alfonso III After this object was relinquished James II undertook an enterprise less splendid but not much less difficult the conquest of Sardinia That island, long accustomed to independence, cost an incredible expense of blood and treasure to the kings of Aragon during the whole fourteenth century It was not fully subdued till the commencement of the next under the reign of Martin

At the death of Martin King of Aragon in 1410 a memorable question arose as to the right of succession Though Petronilla daughter of Ramiro II had reigned in her own right from 1137 to 1172 an opinion seems to have gained ground from the thirteenth century that females could not inherit the crown of Aragon Peter IV had incited a civil war by attempting to settle the succession upon his daughter to the exclusion of his next brother The birth of a son about the same time suspended the ultimate decision of this question but it was tacitly understood that what is called the Salic law

[1] The first edition of this work was published in 18 8.

In this decision it is impossible not to suspect that the judges were swayed rather by politic considerations than a strict sense of hereditary right It was, therefore, by no means universally popular, especially in Catalonia, of which principality the Count of Urgel was a native, and perhaps the great rebellion of the Catalans fifty years afterwards may be traced to the disaffection which this breach, as they thought, of the lawful succession had excited Ferdinand, however, was well received in Aragon The cortes generously recommended the Count of Urgel to his favor, on account of the great expenses he had incurred in prosecuting his claim But Urgel did not wait the effect of this recommendation Unwisely attempting a rebellion with very inadequate means, he lost his estates, and was thrown for life into prison Ferdinand's successor was his son, Alfonso V, more distinguished in the history of Italy than of Spain [A D 1416] For all the latter years of his life he never quitted the kingdom that he had acquired by his arms, and, enchanted by the delicious air of Naples, intrusted the government of his patrimonial territories to the care of a brother and an heir John II [A D 1458], upon whom they devolved by the death of Alfonso without legitimate progeny, had been engaged during his youth in the turbulent revolutions of Castile, as the head of a strong party that opposed the domination of Alvaro de Luna By marriage with the heiress of Navarre he was entitled, according to the usage of those times, to assume the title of king, and administration of government during her life But his ambitious retention of power still longer produced events which are the chief stain on his memory Charles Prince of Viana was, by the constitution of Navarre, entitled to succeed his mother [A D 1420] She had requested him in her testament not to assume the government without his father's consent That consent was always withheld The prince raised what we ought not to call a rebellion but was made prisoner and remained for some time in captivity [A D 1442] John's ill disposition towards his son was exasperated by a step mother, who scarcely disguised her intention of placing her own child on the throne of Aragon at the expense of the eldest born After a life of perpetual oppression chiefly passed in exile or captivity the Prince of Viana died in Catalonia at a moment when that province was in open insurrection upon his account

[A.D. 1461.] Though it hardly seems that the Catalans had any more general provocations, they persevered for more than ten years with inveterate obstinacy in their rebellion, offering the sovereignty first to a prince of Portugal, and afterwards to Regnier Duke of Anjou, who was destined to pass his life in unsuccessful competition for kingdoms The King of Aragon behaved with great clemency towards these insurgents on their final submission.

It is consonant to the principle of this work to pass lightly over the common details of history, in order to fix the reader's attention more fully on subjects of philosophical inquiry. Perhaps in no European monarchy except England was the form of government more interesting than in Aragon, as a fortunate temperament of law and justice with the royal authority. So far as anything can be pronounced of its earlier period before the capture of Saragossa in 1118, it was a kind of regal aristocracy, where a small number of powerful barons elected their sovereign on every vacancy, though, as usual in other countries, out of one family; and considered him as little more than the chief of their confederacy[q] These were the ricoshombres or barons, the first order of the State. Among these the kings of Aragon, in subsequent times, as they extended their dominions, shared the conquered territory in grants of honors on a feudal tenure[r] For this system was fully established in the kingdom of Aragon A ricohombre, as we read in Vitalis Bishop of Huesca, about the middle of the thirteenth century,[s] must hold of the king an honor or barony capable of supporting more than three knights, and this he was bound to distribute among his vassals in military fiefs Once in the year he might be summoned with his feudatories to serve the sovereign for two months (Zurita says three), and he was to attend the royal court, or general assembly,

[q] Alfonso III complained that his barons wanted to bring back old times, quando havia en el reyno tantos reyes como ricos hombres Blancæ Commentaria, p 787 The form of election supposed to have been used by these bold barons is well known 'We, who are as good as you choose you for our king and lord, provided that you observe our laws and privileges and if not not But I do not much believe the authenticity of this form of words See Robertson's Charles V vol i note 31 It is, however sufficiently agreeable to the spirit of the old government

[r] Los ricos hombres, por los feudos que tenian del rey, eran obligados de seguir al rey, si yva en persona á la guerra y residir en ella tres meses en cadaun ano Zurita, L. 1 fol. 43 (Saragossa, 1610.) A fief was usually called in Aragon an honor, que en Castilla llamavan tierra y en el principado de Catsluna feudo fol 46.

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The concessions extorted by our ancestors from John Henry III, and Edward I were secured by the only guarantee those times could afford, the determination of the barons to enforce them by armed confederacies These, however, were formed according to emergencies, and, except in the famous commission of twenty five conservators of Magna Charta, in the last year of John, were certainly unwarranted by law But the Aragonese established a positive right of maintaining their liberties by arms This was contained in the Privilege of Union granted by Alfonso III in 1287, after a violent conflict with his subjects, but which was afterwards so completely abolished and even eradicated from the records of the kingdom, that its precise words have never been recovered [b] According to Zurita it consisted of two articles first, that in the case of the king s proceeding forcibly against any member of the union without previous sentence of the justiciary, the rest should be absolved from their allegiance, secondly, that he should hold cortes every year in Saragossa [c] During the two subsequent reigns of James II and Alfonso IV little pretence seems to have been given for the exercise of this right But dissensions breaking out under Peter IV in 1347, rather on account of his attempt to settle the crown upon his daughter than of any specific public grievances the nobles had recourse to the Union that last voice says Blancas of an almost expiring state full of weight and dignity, to chastise the presumption of kings [d] They assembled at Saragossa and used a remarkable seal for all their public instruments an engraving from which may be seen in the historian I have just quoted It represents the king sitting on his throne with the confederates kneeling in a suppliant attitude around to denote their loyalty and unwillingness to offend But in the background tents and lines of spears are discovered, as a hint of their ability and resolution to defend themselves The legend is Sigillum Unionis Aragonum This respectful demeanor towards a sovereign against whom they were waging war re

[b] Blancas says that he had discovered a copy of the Privilege of Union in the archives of the see of Tarragona and would gladly have published it but for his deference to the wisdom of former ages which had studiously endeavored to destroy all recollection of that dangerous law p 662.

[c] Zurita t i fol 322

[d] Pr scam illam Un on s quasi morientis re publ cæ extremam vocem auctor tat s et grav tat s plenam regum insolent æ apertum v nd cem exc tarunt summa ac s ngulari bonorum omn um consens one. p 669 It is remarkable that such strong language should have been tolerated under Philip II

minds us of the language held out by The Long Parliament before the Presbyterian party was overthrown And although it has been highly censured as inconsistent and hypocritical, this tone is the safest that men can adopt, who, deeming themselves under the necessity of withstanding the reigning monarch, are anxious to avoid a change of dynasty, or subversion of their constitution These confederates were defeated by the king at Epila in 1348 [e] But his prudence and the remaining strength of his opponents inducing him to pursue a moderate course, there ensued a more legitimate and permanent balance of the constitution from this victory of the royalists The Privilege of Union was abrogated, Peter himself cutting to pieces with his sword the original instrument But in return many excellent laws for the security of the subject were enacted, [f] and their preservation was intrusted to the greatest officer of the kingdom, the justiciary, whose authority and preeminence may in a great degree be dated from this period [g] That watchfulness over public liberty, which originally belonged to the aristocracy of ricoshombres, always apt to thwart the crown or to oppress the people, and which was afterwards maintained by the dangerous Privilege of Union, became the duty of a civil magistrate, accustomed to legal rules and responsible for his actions whose office and functions are the most pleasing feature in the constitutional history of Aragon

The justiza or justiciary of Aragon has been treated by some writers as a sort of anomalous magistrate, created originally as an intermediate power between the king and people, to watch over the exercise of royal authority But I do not perceive that his functions were in any essential respect, different from those of the chief justice of England divided from the time of Edward I among the judges of the King's Bench We should undervalue our own constitution by supposing that there did not reside in that court as perfect an authority to redress the subject's injuries as was possessed by the Ara

[e] Zurita observes that the battle of Epila was the last fought in defence of public liberty for which it was held lawful of old to take up arms and resist the king by virtue of the Privileges of Union For the authority of the justiciary being afterwards established the former contentions and wars came to an end means being found to put the weak on a level with the powerful in which consists the peace and tranquillity of all states and from thence the name of Union was by common consent proscribed. t fol. 256. Blancas also remarks that nothing could have turned out more advantageous to the Aragonese than their ill fortune at Epila.

[f] Fueros de Aragon De iis quæ Dominus rex fol 14 et al b pass m

[g] Blanc. Comm pp 671 811 Zurita. iii. fol 229.

gonese magistrate. In the practical exercise, indeed, of this power, there was an abundant difference. Our English judges, more timid and pliant, left to the remonstrances of parliament that redress of grievances which very frequently lay within the sphere of their jurisdiction. There is, I believe, no recorded instance of a habeas corpus granted in any case of illegal imprisonment by the crown or its officers during the continuance of the Plantagenet dynasty. We shall speedily take notice of a very different conduct in Aragon.

The office of justiciary, whatever conjectural antiquity some have assigned to it, is not to be traced beyond the capture of Saragossa in 1118, when the series of magistrates commences [h]. But for a great length of time they do not appear to have been particularly important; the judicial authority residing in the council of ricoshombres, whose suffrages the justiciary collected, in order to pronounce their sentence rather than his own. A passage in Vitalis Bishop of Huesca, whom I have already mentioned, shows this to have been the practice during the reign of James I [i]. Gradually, as notions of liberty became more definite, and laws more numerous, the reverence paid to their permanent interpreter grew stronger, and there was fortunately a succession of prudent and just men in that high office, through whom it acquired dignity and stable influence. Soon after the accession of James II., on some dissensions arising between the king and his barons, he called in the justiciary as a mediator whose sentence, says Blancas, all obeyed [j]. At a subsequent time in the same reign the military orders, pretending that some of their privileges were violated, raised a confederacy or union against the king. James offered to refer the dispute to the justiciary, Ximenes Salanova, a man of eminent legal knowledge. The knights resisted his jurisdiction, alleging the question to be of spiritual cognizance. He decided it, however, against them in full cortes at Saragossa, annulled their league, and sentenced the leaders to punishment [k]. It was adjudged also that no appeal could lie to the

[h] Blancæ Comment. p. 638.

[i] Id. p. 772. Zurita indeed refers the justiciary's pre-eminence to an earlier date, namely, the reign of Peter II., who took away a great part of the local jurisdictions of ricoshombres. t. i. fol. 102. But if I do not misunderstand the meaning of Vitalis, his testimony seems to be beyond dispute. By the General Privilege of 1283, the justiciary was to advise with the ricoshombres, in all cases where the king was a party against any of his subjects. Zurita, t. i. f. 281. See also f. 180.

[j] Zurita, p. 663.

[k] Ibid., t. i. f. 403, t. ii. f. 34, Blan. p. 666. The assent of the cortes seems to render this in the nature of a legislative, rather than a judicial proceeding; but it is difficult to pronounce

spiritual court from a sentence of the justiciary passed with assent of the cortes James II is said to have frequently sued his subjects in the justiciary's court, to show his regard for legal measures, and during the reign of this good prince its authority became more established[l] Yet it was not perhaps looked upon as fully equal to maintain public liberty against the crown, till in the cortes of 1348, after the Privilege of the Union was forever abolished, such laws were enacted, and such authority given to the justiciary, as proved eventually a more adequate barrier against oppression than any other country could boast All the royal as well as territorial judges were bound to apply for his opinion in case of legal difficulties arising in their courts, which he was to certify within eight days By subsequent statutes of the same reign it was made penal for any one to obtain letters from the king, impeding the execution of the justiza's process, and they were declared null Inferior courts were forbidden to proceed in any business after his prohibition[m] Many other laws might be cited, corroborating the authority of this great magistrate, but there are two parts of his remedial jurisdiction which deserve special notice

These are the processes of jurisfirma, or firma del derecho, and of manifestation The former bears some analogy to the writs of *pone* and *certiorari* in England, through which the Court of King's Bench exercises its right of withdrawing a suit from the jurisdiction of inferior tribunals But the Aragonese jurisfirma was of more extensive operation Its object was not only to bring a cause commenced in an inferior court before the justiciary, but to prevent or inhibit any process from issuing against the person who applied for its benefit, or any molestation from being offered to him so that, as Blancas expresses it, when we have entered into a recognizance (firme et graviter asseveremus) before the justiciary of Aragon to abide the decision of law, our fortunes shall be protected by the interposition of his prohibition, from the intolerable iniquity of the royal judges[n] The process termed manifestation afforded as ample security for personal liberty as that of

anything about a transaction so remote in time, and in a foreign country the natives historians writing rather concisely

[l] Blanc. p 663 James acquired the surname of Justiciero by his fair dealings towards his subjects Zurita i fol. 82 El Justiciero properly denotes his exercise of civil and criminal justice

[m] Fueros de Aragon Quod in dubiis non crassis (A D 1348) Quod impetrans (1372) &c Zurita t. ii fol 229. Blanc pp 671 and 811

[n] p. 731 Fueros de Aragon f 137

jurisfirma did for property "To manifest any one," says the writer so often quoted, "is to wrest him from the hands of the royal officers, that he may not suffer any illegal violence, not that he is at liberty by this process, because the merits of his case are still to be inquired into, but because he is now detained publicly, instead of being as it were concealed, and the charge against him is investigated, not suddenly or with passion, but in calmness and according to law, therefore this is called manifestation" *o* The power of this writ (if I may apply

o Est apud nos manifestare reum subito sumere atque e regis manibus extorquere ne qua ipsi contra jus vis inferatur Non quod tunc reus judicio liberetur nihilominus tamen ut loquimur de meritis causæ ad plenum cognoscitur Sed quod deinceps manifesto teneatur quasi antea celatus extitisset, necesseque deinde sit de ipsius culpa non impetu et cum furore sed sedatis prorsus animis et juxta constitutas leges judicari Ex eo autem quod hujusmodi judicium manifesto deprehensum, omnibus jam patere debeat, Manifestationis sibi nomen arripuit p 675

Ipsius Manifestationis potestas tam solida est et repentina ut homini jam collum in laqueum inserenti subveniat Illius enim præsidio, damnatus, dum per leges licet quasi experiendi juris gratia de manibus judicum confestim extorquetur et in carcerem ducitur ad id ædificatum ibidemque asservatur tamdiu quamdiu jurene an injuriâ quid in ea causa factum fuerit judicatur Propterea carcer hic vulgari lingua la carcel de los manifestados nuncupatur p 751

Fueros de Aragon fol 60. De Manifestationibus personarum Independently of this right of manifestation by writ of the justiciary there are several statutes in the Fueros against illegal detention or unnecessary severity towards prisoners (De Custodia reorum f 163) No judge could proceed secretly in a criminal process an indispensable safeguard to public liberty and one of the most salutary as well as most ancient provisions in our own constitution (De judiciis) Torture was abolished, except in cases of coining false money and then only in respect of vagabonds (General Privilege of 1283)

Zurita has explained the two processes of Jurisfirma and manifestation so perspicuously that as the subject is very interesting and I rather out of the common way I shall both quote and translate the passage Con firmar de derecho que es dar caution á estar á justicia, se conceden letras inhibitorias por el justicia de Aragon para que no puedan ser presos, ni privados ni despojados de su possession, hasta que justicialmente se conozca y declare sobre la pretension y justicia de las partes y parezca por processo legitimo, que se deve revocar la tal inhibition Esta fue la suprema y principal autoridad del Justicia de Aragond esde que este magistrado tuvo origen y lo que llama manifestation, porque assi como la firma de derecho por privilegio general del reyno impide que no puede ninguno ser preso ó agraviado contra razon y justicia de la misma manera la manifestacion que es otro privilegio y remedia muy principal tiene fuerca quando alguno es preso sin preceder processo legitimo ó quando lo prenden de hecho sin orden de justicia y en estos casos solo el Justicia de Aragon quando se tiene recurso al el se interpone manifestando il preso que es tomarlo á su mano de poder de qualquiera juez aunque sea el mas supremo y es obligado el Justicia de Aragon y sus lugartenientes de proveer la manifestacion en el mismo instante que les es pedida sin preceder informacion y basta que se pida por qualquiere persona que se diga procurador del que quiere que lo tengan por manifesto t ii fol 386. Upon a firma de derecho which is to give security for abiding the decision of the law the Justiciary of Aragon issues letters inhibiting all persons to arrest the party or deprive him of his possession until the matter shall be judicially inquired into and it shall appear that such inhibition ought to be revoked This process and that which is called manifestation have been the chief powers of the justiciary ever since the commencement of that magistracy And as the firma de derecho by the general privilege of the realm secures every man from being arrested or molested against reason and justice so the manifestation which is another principal and remedial right takes place when any one is actually arrested without lawful process, and in such cases only the Justiciary of Aragon when recourse is had to him interposes by manifesting the person arrested that is by taking him into his own hands out of the power of any judge however high in authority and this manifestation the justiciary or his deputies in his absence are bound to issue at the same instant it is demanded without further inquiry, and it may be demanded by any one as attorney of the party requiring to be manifested.

our term) was such, as he elsewhere asserts, that it would rescue a man whose neck was in the halter A particular prison was allotted to those detained for trial under this process

Several proofs that such admirable provisions did not remain a dead letter in the law of Aragon appear in the two historians, Blancas and Zurita, whose noble attachment to liberties, of which they had either witnessed or might foretell the extinction, continually displays itself I cannot help illustrating this subject by two remarkable instances The heir apparent of the kingdom of Arragon had a constitutional right to the lieutenancy or regency during the sovereign's absence from the realm The title and office indeed were permanent, though the functions must of course have been superseded during the personal exercise of royal authority But as neither Catalonia nor Valencia which often demanded the king's presence, were considered as parts of the kingdom, there were pretty frequent occasions for this anticipated reign of the eldest prince Such a regulation was not likely to diminish the mutual and almost inevitable jealousies between kings and their heirs apparent, which have so often disturbed the tranquility of a court and a nation Peter IV removed his eldest son afterwards John I, from the lieutenancy of the kingdom The prince entered into a firma del derecho before the justiciary, Dominic de Cerda who, pronouncing in his favor, enjoined the king to replace his son in the lieutenancy as the undoubted right of the eldest born Peter obeyed not only in fact, to which, as Blancas observes the law compelled him, but with apparent cheerfulness [p] There are indeed no private persons who have so strong an interest in maintaining a free constitution and the civil liberties of their countrymen as the members of royal families since none are so much exposed in absolute governments, to the resentment and suspicion of a reigning monarch

John I, who had experienced the protection of law in his weakness, had afterwards occasion to find it interposed against his power This king had sent some citizens of Saragossa to prison without form of law They applied to Juan de Cerda, the justiciary, for a manifestation He issued his writ accordingly nor says Blancas could he do otherwise without being subject to a heavy fine The king pretending

[p] Zurita ubi supra. Blancas p 673

that the justiciary was partial, named one of his own judges, the vice chancellor, as coadjutor This raised a constitutional question, whether, on suspicion of partiality, a coadjutor to the justiciary could be appointed The king sent a private order to the justiciary not to proceed to sentence upon this interlocutory point until he should receive instructions in the council, to which he was directed to repair But he instantly pronounced sentence in favor of his exclusive jurisdiction without a coadjutor He then repaired to the palace Here the vice chancellor, in a long harangue, enjoined him to suspend sentence till he had heard the decision of the council Juan de Cerda answered that, the case being clear, he had already pronounced upon it This produced some expressions of anger from the king, who began to enter into an argument on the merits of the question But the justiciary answered that, with all deference to his majesty, he was bound to defend his conduct before the cortes, and not elsewhere On a subsequent day the king, having drawn the justiciary to his country palace on pretence of hunting renewed the conversation with the assistance of his ally the vice chancellor, but no impression was made on the venerable magistrate whom John at length, though much pressed by his advisers to violent courses, dismissed with civility The king was probably misled throughout this transaction, which I have thought fit to draw from obscurity, not only in order to illustrate the privilege of manifestation, but as exhibiting an instance of judicial firmness and integrity, to which, in the fourteenth century, no country perhaps in Europe could offer a parallel [q]

Before the cortes of 1348 it seems as if the justiciary might have been displaced at the king's pleasure From that time he held his station for life But in order to evade this law, the king sometimes exacted a promise to resign upon request Ximenes Cerdan the justiciary in 1420, having refused to fulfil this engagement, Alfonso V gave notice to all his subjects not to obey him, and, notwithstanding the alarm which this encroachment created eventually succeeded in compelling him to quit his office In 1439 Alfonso insisted with still greater severity upon the execution of a promise to resign made by another justiciary, detaining him in prison until his death But the cortes of 1442 proposed a law, to which the king re-

[q] Blancæ Commentar ubi supra. Zurita relates the story but not so fully

luctantly acceded, that the justiciary should not be compellable to resign his office on account of any previous engagement he might have made.[r]

But lest these high powers, imparted for the prevention of abuses, should themselves be abused, the justiciary was responsible, in case of an unjust sentence, to the extent of the injury inflicted;[s] and was also subjected, by a statute of 1390, to a court of inquiry, composed of four persons chosen by the king out of eight named by the cortes; whose office appears to have been that of examining and reporting to the four estates in cortes, by whom he was ultimately to be acquitted or condemned. This superintendence of the cortes, however, being thought dilatory and inconvenient, a court of seventeen persons was appointed in 1461 to hear complaints against the justiciary. Some alterations were afterwards made in this tribunal.[t] The justiciary was always a knight, chosen from the second order of nobility, the barons not being liable to personal punishment. He administered the coronation oath to the king and in the cortes of Aragon the justiciary acted as a sort of royal commissioner, opening or proroguing the assembly by the king's direction.

No laws could be enacted or repealed, nor any tax imposed, without the consent of the estates duly assembled.[u] Even as early as the reign of Peter II, in 1205, that prince having attempted to impose a general tallage, the nobility and commons united for the preservation of their franchises; and the tax was afterwards granted in part by the cortes.[v] It may easily be supposed that the Aragonese were not behind other nations in statutes to secure these privileges, which upon the whole appear to have been more respected than in any other monarchy.[w] The General Privilege of 1283 formed a sort of

[r] Fueros de Aragon, fol. 22, Zurita, t. iii. fol. 140, 255, 272, Blanc. Comment. p. 701.

[s] Fueros de Aragon, fol. 25.

[t] Blancas, Zurita, t. iii. fol. 321, t. iv. f. 103. These regulations were very acceptable to the nation. In fact, the justiza of Aragon had possessed much more unlimited powers than ought to be intrusted to any single magistrate. The Court of King's Bench in England, besides its consisting of four co-ordinate judges, is checked by the appellant jurisdictions of the Exchequer Chamber and House of Lords, and still more importantly by the rights of juries.

[u] Majores nostri, quæ de omnibus statuenda essent, noluerunt juberi, vetarive posse, nisi vocatis descriptisque ordinibus, ac cunctis eorum adhibitis suffragiis, re ipsâ cognita et promulgatâ. Unde perpetuum illud nobis comparatum est jus, ut communes et publicæ leges neque tolli neque rogari possint, nisi prius universus populus una voce comitus institutis suum ea de re liberum suffragium ferat, idque postea ipsius regis assensu comprobetur. Blancæ, p. 761.

[v] Zurita, t. i. fol. 92.

[w] Fueros de Aragon, Quod sisssæ in Aragonia removeantur (A.D. 1372.) De prohibitione sisarum. (1398.) De conservatione patrimonii. (1461.) I have only remarked two instances of arbitrary taxation in Zurita's history, which

groundwork for this legislation, like the Great Charter in England. By a clause in this law, cortes were to be held every year at Saragossa. But under James II. their time of meeting was reduced to once in two years, and the place was left to the king's discretion.[x] Nor were the cortes of Aragon less vigilant than those of Castile in claiming a right to be consulted in all important deliberations of the executive power, or in remonstrating against abuses of government, or in superintending the proper expenditure of public money.[y] A variety of provisions, intended to secure these parliamentary privileges and the civil liberties of the subject, will be found dispersed in the collection of Aragonese laws,[z] which may be favorably compared with those of our own statute-book.

Four estates, or, as they were called, arms (brazos), formed the cortes of Aragon—the prelates and commanders of military orders, who passed for ecclesiastics;[a] the barons or ricos-hombres; the equestrian order or infanzones; and the deputies of royal towns.[b] The two former had a right of appearing by proxy. There was no representation of the infanzones, or lower nobility. But it must be remembered that they were

is singularly full of information, one, in 1343 when Peter IV collected money from various cities though not without opposition, and the other a remonstrance of the cortes in 1383 against heavy taxes, and it is not clear that this refers to general unauthorized taxation Zurita, t ii f 168 and 382 Blancas mentions that Alfonso V set a tallage upon his towns for the marriage of his natural daughters, which he might have done had they been legitimate, but they appealed to the justiciary's tribunal, and the king receded from his demand p 701

Some instances of tyrannical conduct in violation of the constitutional laws occur as will naturally be supposed in the annals of Zurita The execution of Bernard Cabrera under Peter IV t. ii f 336, and the severities inflicted on Queen Borcia by her son in law John I, f 391, are perhaps as remarkable as any

x Zurita, t i f 426. In general the session lasted from four to six months One assembly was prorogued from time to time, and continued six years from 1446 to 1452, which was complained of as a violation of the law for their biennial renewal t iv f 6.

y The Sicilian war of Peter III was very unpopular, because it had been undertaken without consent of the barons, contrary to the practice of the kingdom porque ningun negocio arduo emprendian sin acuerdo y consejo de sus ricoshombres Zurita, t i fol 264 The cortes, he tells us, were usually divided into two parties, whigs and tories; estava ordinariamente dividida en dos partas, la una que pensava procurar el beneficio del reyno, y la otra que el servicio del rey t iii fol 321

z Fueros y observancias del reyno de Aragon 2 vols in fol Saragossa 1667 The most important of these are collected by Blancas, p 750.

a It is said by some writers that the ecclesiastical arm was not added to the cortes of Aragon till about the year 1300. But I do not find mention in Zurita of any such constitutional change at that time, and the prelates, as we might expect from the analogy of other countries, appear as members of the national council long before Queen Petronilla, in 1142 summoned a los perlados, ricoshombres, y cavalleros, y procuradores de las ciudades y villas, que le juntassen á cortes generales en la ciudad de Huesca Zurita t i fol 71 So in the cortes of 1275, and on other occasions

b Popular representation was more ancient in Aragon than in any other monarchy The deputies of towns appear in the cortes of 1133 as Robertson has remarked from Zurita Hist of Charles V note 32 And this cannot well be called in question or treated as an anomaly, for we find them mentioned in 1142 (the passage cited in the last note), and again in 1164 when Zurita enumerates many of their names fol 74 The institution of consejos, or corporate districts under a presiding town prevailed in Aragon as it did in Castile

were the aggressors by attacking a town in Andalusia [n] Predatory inroads of this nature had hitherto been only retaliated by the Christians But Ferdinand was conscious that his resources extended to the conquest of Granada, the consummation of a struggle protracted through nearly eight centuries Even in the last stage of the Moorish dominion, exposed on every side to invasion, enfeebled by civil dissension that led one party to abet the common enemy, Granada was not subdued without ten years of sanguinary and unremitting contest Fertile beyond all the rest of Spain, that kingdom contained seventy walled towns, and the capital is said, almost two centuries before, to have been peopled by 200,000 inhabitants [o] Its resistance to such a force as that of Ferdinand is perhaps the best justification of the apparent negligence of earlier monarchs But Granada was ultimately to undergo the yoke The city surrendered on the 2nd of January, 1492—an event glorious not only to Spain but to Christendom—and which, in the political combat of the two religions, seemed almost to counterbalance the loss of Constantinople It raised the name of Ferdinand and of the new monarchy which he governed to high estimation throughout Europe Spain appeared an equal competitor with France in the lists of ambition These great kingdoms had for some time felt the jealousy natural to emulous neighbors The house of Aragon loudly complained of the treacherous policy of Louis XI He had fomented the troubles of Castile, and given, not indeed an effectual aid, but all promises of support, to the princess Joanna, the competitor of Isabel Rousillon, a province belonging to Aragon, had been pledged to France by John II for a sum of money It would be tedious to relate the subsequent events, or to discuss their respective claims to its possession [p] At the accession of Ferdinand, Louis XI still held Rousillon, and showed little intention to resign it But Charles VIII, eager to smooth every impediment to his Italian expedition, restored the province to Ferdinand in 1493 Whether by such a sacrifice he was able to lull the king of Aragon into acquiescence, while he dethroned his relation at Naples, and alarmed for a moment all Italy with the apprehension of French dominion, it is not within the limits of the present work to inquire

[n] Zurita t iv fol 314
[o] Id t iv fol 314
[p] For these transactions see Carnier Hist de France or Gaillard Rivalité de France et d Espagne t i i. The latter is the most impartial French writer I have ever read in matters where his own country is concerned.

NOTE TO BOOK IV.

NOTE.

The story of Cava, daughter of Count Julian, whose seduction by Roderic, the last Gothic king, impelled her father to invite the Moors into Spain, enters largely into the cycle of Castilian romance and into the grave narratives of every historian It cannot, however, be traced in extant writings higher than the eleventh century, when it appears in the Chronicle of the Monk of Silos There are Spanish historians of the eighth and ninth centuries, in the former, Isidore Bishop of Beja (Pacensis), who wrote a chronicle of Spain; in the latter, Paulus Diaconus of Merida, Sebastian of Salamanca, and an anonymous chronicler. It does not appear, however, that these dwell much on Roderic's reign (See Masdeu, Historia Critica de España, vol xiii p 882) The most critical investigators of history, therefore, have treated the story as too apocryphal to be stated as a fact A sensible writer in the History of Spain and Portugal, published by the Society for the Diffusion of Useful Knowledge, has defended its probability, quoting a passage from Ferreras, a Spanish writer of the eighteenth century, whose authority stands high, and who argues in favor of the tradition from the brevity of the old chroniclers who relate the fall of Spain, and from the want of likelihood that Julian, who had hitherto defended his country with great valor, would have invited the Saracens, except through some strong motives This, if we are satisfied as to the last fact, appears plausible, but another hypothesis has been suggested, and is even mentioned by one of the early writers, that Julian, being of Roman descent, was ill-affected to the Gothic dynasty, who had never attached to themselves the native inhabitants This I cannot but reckon the less likely explanation of the two Roderic, who became archbishop of Toledo in 1208, and our earliest authority after the Monk of Silos, calls Julian "vir nobilis de nobili Gothorum prosapia ortus, illustris in officio Palatino, in armis exercitatus," &c (See Schottus, Hispania Illustrata, ii 63) Few, however, of those who deny the truth of the story as it relates to Cava admit the defection of Count Julian to the Moors, and his existence has been doubted The two parts of the story cohere together, and we have no better evidence for one than for the other

Southey, in his notes to the poem of Roderic says, "The best Spanish historians and antiquaries are persuaded that there is no cause for disbelieving the uniform and concurrent tradition of both Moors and Christians" But this is on the usual assumption, that those are the best who agree best with ourselves Southey took generally the credulous side, and his critical judgment is of no superlative value Masdeu, in learning and laboriousness the first Spanish antiquary, calls the story of Julian's daughter "a ridiculous tale, framed in the age of romance, when histories were thrust aside (arrinconadas) and any love-tale was preferred to the most serious truth" (Hist Crit de España, vol x p 223) And when in another passage (vol xii p 6) he recounts the story at large he says that the silence of all writers before the monk of Silos "should be sufficient in my opinion to expel from our history a romance so destitute of foundation, which the Arabian romancers doubtless invented for their ballads"

A modern writer of extensive learning says, "This fable, which has found its way into most of the sober histories of Spain, was first introduced by the monk of Silos, a chronicler of the eleventh century There can be no doubt that he borrowed it from the Arabs, but it seems hard